



**Europäisches
Patentamt**

**European
Patent Office**

**Office européen
des brevets**

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: D 0009/01

D E C I S I O N
of the Disciplinary Board of Appeal
of 21 February 2003

Appellant: N. N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
20 September 2000.

Composition of the Board:

Chairman: B. Schachenmann
Members: J.-P. Seitz
Ch. Onn

Summary of Facts and Submissions

- I. The Appellant appealed, by a notice of appeal both dated and received by fax on 25 October 2000, against the decision posted by registered letter on 27 September 2000 of the Examination Board that he had been unsuccessful in paper B of the 2000 European Qualifying Examination ("EQE").

The written statement of grounds of the appeal was received on 14 November 2000, being incorporated in the same letter dated 25 October 2000 in which the notice of appeal filed by fax was confirmed.

The appeal fee was duly paid on 28 October 2000.

- II. By letter from the Board of 21 March 2001, the President of the European Patent Office and the President of the Institute of Professional Representatives were respectively invited, pursuant to Article 27(4) REE and 12 RDR, to comment on the case. By a letter dated 8 May 2001, 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 submissions in his grounds of appeal consist of an assertion that the mark he was given for paper B is too low due to the fact that the translation into English of his answer paper (drafted in his native language which is Spanish) provided by the Examination Secretariat and further submitted to the candidate, in fact contains at least nine relevant mistakes that might have altered the final assessment by both examiners. To support this assertion he enclosed with the grounds of appeal a new sworn translation of his

paper drawn up in Spanish, together with a copy of the original answer paper.

- IV. Those documents were communicated to the Examination Board which was invited to comment on them and on their relevance in respect of the marking of paper B.

In its answer dated 14 March 2002 the Examination Board admitted that the translation submitted to both markers was not perfect, but that none the less, after taking those mistakes into account, the Appellant's paper could not be awarded a higher mark.

- V. By a communication dated 18 April 2002, the Board of appeal notified the Appellant of its provisional opinion that, on the basis of the enquiries made by the rapporteur (see IV above), it appeared that on the one hand the translation was far from perfect but that on the other hand the Examination Board, having duly taken that into account, had decided not to revise its opinion on the substantive merits of the paper.

Since the Board is not empowered to change the marks awarded, i.e to substitute its own assessment of the merits of a paper for that of the markers, it was of the opinion that the appeal, which is directed against the evaluation made by the examiners, would have to be dismissed.

The Appellant was invited to make any further submissions within the following two months.

- VI. In written observations filed on 7 June 2002 the Appellant argued, in summary, that:

- (1) when he lodged his appeal he was indeed seeking a revision of the marking of paper B by the Examination Board, since the marks awarded to said paper, i.e 47, were close to the limit of 50 for a "Pass" grade, the only reason for its result being obviously the errors in the translation.
- (2) a comparison of the Examiners' report on paper B with his own answer paper demonstrates that in fact the answers erroneously translated are those which were the most poorly marked. He then pointed out a few examples of the substantive merits of his paper in respect of the Examiners' report.

VII. On 19 June 2002 the Appellant was summoned to the oral proceedings scheduled to take place on 28 October 2002. On 18 October 2002 he requested that the European Patent Office should make provision at its own expenses for interpretation from English into Spanish.

This request was refused by the Board, and the Appellant duly informed by a brief communication of 21 October 2002.

On 28 October 2002, the Appellant being present, the scheduled oral proceedings could not take place since a member of the Board was absent. The Appellant agreed to a shorter notice period in a summons to further oral proceedings to be held as soon as possible; he also expressed his intention to file a request for reimbursement of his costs.

In a letter, both dated and received by fax on 31 October 2002, the Appellant insisted on having his paper referred back to the Examination Board for it to

reconsider its decision on the basis of a correct translation instead of the original which was partially unintelligible. He again requested, if a new hearing was to be organised, that the European Patent Office provide for interpretation from English into Spanish.

Said request was refused by the Board pursuant to the provisions of Rule 2 EPC, and the Appellant was informed that the new hearing was to be held on 28 November 2002.

By fax dated 20 November 2002 the Appellant withdrew his request for oral proceedings. In a communication dated 25 November 2002 he was informed by the Board that the proceedings would be continued in writing.

VIII. The Appellant requested:

- that revision of the mark for paper B be agreed taking account of the new sworn translation he provided to the Board with his statement of grounds of appeal.

No request for reimbursement of costs has been filed.

Reasons for the Decision

1. The appeal is admissible.
2. The Appellant, unsuccessful in paper B of the EQE held in April 2000, requests "revision of the marks under the new sworn translation he provided". In his view the latter translation would show that he deserved a grade sufficient to pass said paper. He further states in his

letter dated 3 June 2002 in response to the Communication of the Board that, when he lodged his appeal against the marks awarded by the two examiners to his paper B, he was in fact seeking a revision of said marks by the Examination Board on the grounds of the mistakes detected in the translation from Spanish, the language in which the answer was drafted, into English, one of the three official languages of the EPO. He added that in his opinion the claims and the arguments put forward to support them deserved in fact a "Pass" grade.

The Board therefore concludes from these statements that the Appellant requests that the decision of the Examination Board be set aside and that after due reconsideration of his paper B a higher marking be awarded, at least enough for him to pass the examination.

3. As stated above, the Appellant's submissions consist of no more than his opinion that he should have been awarded a higher mark if the examiners had been provided with a correct translation of his paper.

According to the constant and well established jurisprudence of this Board its jurisdiction in EQE matters is limited to examining whether or not the Examination Board has violated the REE or any provision implementing it (see Article 27(1) REE).

It cannot therefore be within the competence of this Board to reconsider the examination procedure as to its merits, i.e the quality of a candidate's answer paper, unless obvious and serious mistakes can be established without reopening the whole marking procedure.

In the present case the Appellant has provided the Board with a sworn translation he considered to be correct. Said sworn translation was submitted for comments, on behalf of this Board, to the Examination Board, which after having duly taken the Appellant's submissions into consideration remained convinced that the extent of the imperfections in the original translation could not in any way influence the result of the marking.

Since the Board has no reason to substitute its assessment for that of the Examination Board, and since on the other hand the alleged mistakes in the translation are far from being serious enough to have an obvious influence on the marks, there is no reason for the Board to remit the case for reopening the marking procedure. In the case in suit the Appellant's statements since the very beginning of the appeal procedure are based entirely on his own opinion as to the merits of his performance. Such a value judgment, being *per se* subjective, is not sufficient to establish an infringement of the law open to judicial review.

4. Accordingly, the Disciplinary Board of Appeal has no alternative but to dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Beer

B. Schachenmann