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Boards of Appeal

Chambres de recours

**Case Number:** D 0011/01

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 4 July 2002**

**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:** C. Rennie-Smith  
C. Onn

## **Summary of Facts and Submissions**

- I. The Appellant appealed, by a notice of appeal both dated and received by fax on 30 October 2000, against the decision, posted by registered letter on 27 September 2000, of the Examination Board that he had been unsuccessful in paper C of the 2000 European Qualifying Examination ("EQE"). The written statement of the grounds of appeal were also dated 30 October 2000, being incorporated in the same faxed letter as the notice of appeal. The same letter containing both notice and grounds of appeal was also received by post on 2 November 2000.
  
- II. By letters from the Board of 21 March 2001, 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 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 of his belief that the mark he was given is too low, his opinion that he addressed the majority (but not, as he concedes, all) of the issues raised by the examination paper, and a list of the major points he did deal with in his answer script. Presumably to support that, he also enclosed a copy of his answer script with the mailed copy of his notice and grounds of appeal.
  
- IV. By a communication dated 14 February 2002, the Board notified the Appellant of its provisional opinion that

the appeal would have to be dismissed and invited the Appellant to make any further submissions within the following two months. No reply to that communication has been received.

- V. The Appellant requests "reconsideration of [his] answer script" and "a favourable outcome". No request is made for oral proceedings.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The appellant, an unsuccessful candidate in paper C of the European Qualifying Examination ("EQE") held in April 2000, requests "reconsideration of [his] answer script" and "a favourable outcome". Although not expressly stated, the board concludes from this that the appellant requests that the decision of the Examination Board be set aside and a decision which gives the candidate higher marks be substituted. In the paper in question, the appellant was awarded 48 marks but considers his answers merited at least "enough marks to pass the examination" (i.e. at least 50 marks).
3. As mentioned above (at III), the appellant's submissions consist of no more than his opinion that he should have received a higher mark, an opinion supported by a list of the major points he considers he dealt with and a copy of his answer script.
4. 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 Regulation on the European Qualifying Examination ("REE") or a provision implementing the REE. 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 this 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 REE, its implementing provisions or a higher-ranking law. 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 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. (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 arguments must be seen in the light of this principle.

5. In the present case the appellant's argument, which is based entirely on his own opinion of his examination performance, illustrates the very essence of the reason why the Disciplinary Board cannot entertain such submissions. He could not have demonstrated more clearly that his opinion and that of the examiners as to his answers are different. This Board cannot review the decisions of the examiners unless, as mentioned

above, there is a mistake in the marking which is so obvious that it can be established without re-opening the marking procedure. Otherwise, such differences of opinion are a reflection of value judgments which are not, in principle, subject to judicial review (see D1/92, supra, paragraph 6). The appellant concludes his analysis by saying he "hopes for a favourable outcome" to the requested "reconsideration of [his] answer script". Such reconsideration is quite simply not open to the Disciplinary Board.

6. Accordingly 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:

The Chairman:

P. Martorana

B. Schachenmann