



Case Number: D 0001/03

D E C I S I O N
of the Disciplinary Board of Appeal
of 5 November 2003

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
18 September 2002.

Composition of the Board:

Chairman: B. Schachenmann
Members: C. Holtz
A. Armengaud

Summary of Facts and Submissions

- I. The appellant lodged his appeal against the decision under appeal on 5 November 2002. On 8 November 2002, a fee of EUR 355 for the appeal was entered into the EPO bank account.
- II. The decision under appeal was notified on 25 September 2002.
- III. The Board issued a communication, noting that the appeal fee seemed to have been paid out of term, the time limit for appeal having expired on 5 November 2002. The Board further invited the appellant to pay a surcharge under Article 8(3) and (4) of the Rules Relating to Fees (RRF)
- IV. The appellant responded in a letter of 16 October 2003 to the invitation by the Board by requesting that the amount paid be reimbursed, for the reason that there was no admissible appeal in existence, in accordance with Article 108 EPC.

Reasons for the Decision

1. According to Article 27(2) of the Regulation on the European Qualifying Examination (REE), which applies to the present case, an appeal against a decision of the Disciplinary Board is not deemed to have been filed until the appeal fee has been paid.

The appeal fee for appeals concerning decisions taken under the REE is specified by the President of the European Patent Office in accordance with Article 19 REE. Article 1(a) RRF foresees that the RRF applies to fees laid down by the President of the EPO other than those specified in Article 2 RRF. One such fee is the appeal fee laid down pursuant to Article 19 REE. Finally, the Regulation on Discipline for (RDR) lays down that Rules 83 and 85 EPC apply. The RRF therefore applies, at least by analogy, to appeal fees for appeals lodged under Article 27 REE. Otherwise appellants under REE would be treated differently than other appellants before the EPO.

2. As the Board set out in its communication, by application of Article 8 RRF, an appeal fee paid pursuant to the REE is not deemed to have been paid until it has been entered in a bank account held by the EPO. Since in the present case this occurred only on 8 November 2002 and the appellant did not pay any surcharge under Article 8(3)(b) RRF within the time limit decided by the Board in the same communication, there is no appeal in existence under Article 27(2) REE in the present case. Hence, the amount paid for the appeal must be reimbursed.

Order

For these reasons it is decided that:

The appeal fee of EUR 355 paid on 8 November 2002 is reimbursed.

The Registrar:

The Chairman:

M. Beer

B. Schachenmann