



**Europäisches  
Patentamt**

Beschwerdekammer  
in Disziplinarangelegenheiten

**European  
Patent Office**

Disciplinary  
Board of Appeal

**Office européen  
des brevets**

Chambre de recours statuant  
en matière disciplinaire

**Case Number:** D 0016/04

**D E C I S I O N**  
of the Disciplinary Board of Appeal  
of 18 February 2005

**Appellant:** N.N.

**Decision under appeal:** Decision of the Examination Secretariat dated  
27 September 2004 refusing the application for  
enrolment for the EQE 2005.

**Composition of the Board:**

**Chairman:** P. Messerli  
**Members:** B. Schachenmann  
W. Kovac

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the Examination Secretariat dated 27 September 2004 refusing the appellant's application for enrolment for the European qualifying examination (EQE) in 2005.
- II. The ground of refusal was that, for the purposes of Article 10(2) of the Regulation on the European qualifying examination (REE), only training completed after a university-level scientific or technical qualification had been awarded was considered. The appellant's professional activity was therefore regarded to cover only 9 months. As the appellant's degree relevant for enrolment was a list B degree she could at the earliest be admitted to the EQE in 2011.
- III. On 12 October 2004 the appellant appealed against this decision and paid the appeal fee. The notice of appeal was filed in English and in Swedish. At the same time a written statement setting out the grounds of appeal was filed. The appellant requested that her enrolment for the EQE 2005 be accepted and that the appeal fee be reimbursed. As an auxiliary request she requested to be admitted to the EQE 2005 in accordance with Article 9 of the Instructions, by the power of the Examination Board to decide accordingly. She also requested reimbursement of the appeal fee under Article 27(4) REE or reduction of the fee in accordance with Article 14 EPC.
- IV. In support of these requests the appellant submitted that Article 10 REE only stated two conditions for enrolment for the EQE, namely possession of a

university-level scientific or technical qualification and completion of a training period without, however, prescribing the order in which the two conditions had to be fulfilled. The same was true for the Instructions concerning the qualifications required for enrolment for the EQE (Instructions, supplement to the OJ 12/2003, page 17). Thus, it could not be derived from these provisions that only training completed after a university-level scientific or technical qualification had been awarded could be considered. The appellant had successfully trained as a patent attorney with a professional representative for 7 years before she obtained her degree as a Bachelor of Science in 2004 and therefore complied with the conditions of Article 10 REE. This was all the more so as a large part of her technical studies were completed already before 1997 when she had started the training with the professional representative.

- V. In a communication dated 18 January 2005 the Disciplinary Board of Appeal informed the appellant of its provisional view that the decision under appeal appeared to be based on a proper interpretation of Article 10 REE. Besides the fact that this provision was structured so that the requirement of a scientific or technical qualification preceded the requirement of a full-time training period, it was to be considered that the training included activities typical for professional representation before the EPO which presupposed scientific or technical qualifications according to Article 10(1) REE. Thus, in the light of the purpose of this provision it appeared that it had to be interpreted to the effect that the required scientific or technical qualification should precede

the training period. The conditions of Article 10 REE corresponded to an "evaluation-by-type" approach and the compliance with them could not be replaced by a candidate's individual knowledge and skill. As derivable from Article 6 of the Instructions, professional training without possessing the required scientific or technical qualification could not be equated to professional training after having obtained such a degree. This interpretation was confirmed by national regulations in the Contracting States, e.g. in Germany, explicitly providing that the scientific or technical qualification had to precede the training period.

- VI. In reply to this communication the appellant maintained that the Examination Secretariat had misinterpreted Article 10 REE. In particular, nothing could be derived from the order in which the conditions for enrolment were mentioned in this provision. While it was true that a meaningful training period included activities which presupposed scientific or technical knowledge, such knowledge did not presuppose an issued diploma. An "evaluation-by-type" approach was therefore not suited for judging the candidates. A method applied directly to candidates should be more exact. In addition to the candidates "with diploma at the start of the training period" and the candidates "without diploma at the start of the training period", a third type, i.e. candidates "with a large part of a degree at the start of the training period" should be considered. Before the third type of candidate was discarded from the EQE, this type should be evaluated more closely. Article 6 of the Instructions only concerned candidates without a degree at the time of enrolment. It should therefore

not affect the interpretation of Article 10 REE which concerned candidates who actually completed their degree before enrolment. The fact that the national regulation in Germany required that the technical or scientific qualification preceded the training period was irrelevant since the REE should not be interpreted according to national law existing in only one or a few of the Contracting States. With respect to the auxiliary request, the appellant submitted that Articles 2, 3 and 4 of the Instructions dealt only with degrees, diplomas and certificates, and did not therefore cover her situation. Neither was her case covered by Article 6 of the Instructions presupposing a 10 year training period. Hence, Article 9 of the Instructions was applicable giving the Examination Board the opportunity of accepting her enrolment on the individual merits of the case. In particular, it should be considered that her degree was 89.1% complete when she started the training period.

- VII. The Presidents of the EPO and of the Institute of professional Representatives were invited to file observations on the matter, but none were received.
- VIII. Upon inquiry the Examination Secretariat confirmed that the decision under appeal did not prevent the appellant to apply for enrolment for the EQE based on Article 6 of the Instructions as soon as she could establish that she had at least 10 years' experience as specified in Article 10(2)(a) REE.

## Reasons for the Decision

1. The appeal complies with the provisions of Article 27(1) and (2) REE and is therefore admissible.
2. The main issue of the appeal concerns the interpretation of Article 10 REE referring to the conditions for enrolment for the EQE. Paragraphs (1) and (2) of this Article - as far as relevant for the present case - read as follows:

"(1) Candidates shall be enrolled for the examination on request provided they possess a university-level scientific or technical qualification or are able to satisfy the Secretariat that they possess an equivalent level of scientific or technical knowledge, and fulfil the conditions specified in paragraph 2.

(2) Candidates who apply for enrolment must be able

(a) to satisfy the Secretariat that at the date of examination they have

(i) completed a full-time training period of at least three years in one of the Contracting States under the supervision of one or more persons entered on the list referred to in Article 134(1) of the European Patent Convention (...), in which period they have taken part in a wide range of activities pertaining to European patent applications or European Patents, or (...)"

- 2.1 According to its constant practice the Examination Secretariat applies Article 10 REE and the Instructions to the effect that only periods of professional

activity completed after the required degree was obtained are taken into account (see EPO publication "How to become a European Patent Attorney", Chapter: Conditions for enrolment; available from the EPO in printed form or via the EPO homepage). The decision under appeal is in line with this practice.

2.2 For the purpose of interpreting Article 10 REE the rules of interpretation as laid down in the Vienna Convention of treaties are relevant which, according to the decision G 1/83 (OJ EPO 1985, 64), are applicable to the EPC. Their application to the REE is justified by the fact that the REE was adopted by the Administrative Council based on Article 134(8)(a) EPC. In accordance with the general rule of interpretation of Article 31(1) Vienna Convention the provisions of the REE therefore have to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms in their context and in the light of their object and purpose.

2.3 Considering Article 10 REE and, in particular, the two conditions for enrolment according to Article 10(1) and (2) REE, respectively, the appellant is correct in so far as the order in which the two conditions have to be fulfilled is not explicitly prescribed. However, Article 10(1) REE mentions the requirement of possessing a university-level scientific or technical or equivalent qualification first followed by a reference to the conditions of paragraph 2, i.e. the three years' full-time training period to be completed at the date of the examination. The *ordinary meaning* to be given to this grammatical order reflects, in the Board's view, the common understanding that studies

normally precede practical training. The interpretation of the Examination Secretariat does not conflict with such an understanding of Article 10 REE.

2.4 Furthermore, Article 10 REE has to be read in the *context* of the Instructions concerning the qualifications required for the EQE (see point IV, *supra*). Two aspects appear to be important in this connection.

First, it follows from Articles 2 and 3 of the Instructions that for fulfilling the conditions under Article 10(1) REE a scientific or technical "degree" from a university or an equivalent "degree, diploma or certificate" from another technical school is required. Scientific or technical qualifications which did not lead to a degree, diploma or certificate of the required type are not considered in Article 10(1) REE. For such cases the Instructions contain the provision of Article 6.

Secondly, according to the provisions referred to above, it is the candidate's scientific or technical degree which determines the length of the required period of practical training or experience, i.e. three years for candidates possessing a degree according to Article 2, additional three years for candidates with a degree according to Article 3(a) and 10 years for candidates without such a degree according to Article 6. In other words, according to the logic of this provision, the required length of the training period is a consequence of the candidate's technical or scientific degree acquired before starting the training period rather than vice versa.



2.5 With regard to the *purpose* of Article 10 REE the Disciplinary Board of Appeal found in its decisions D 14/93 (OJ EPO 1997, 561, point 2.7) and D 25/96 (OJ EPO 1998, 45, point 3.3.1) that it is to ensure that only those candidates are admitted to the EQE as may be assumed, in view of their experience, to have prospects of passing it. The experience is to be recognized if acquired, according to Article 10(2) REE, in connection with "a wide range of activities pertaining to European patent applications or European patents". As stated in D 14/93 (point 2.1), these activities **presuppose** scientific or technical knowledge which, according to Article 10(1) REE, is established by the possession of a scientific or technical qualification, i.e. "a degree, diploma or certificate" of the type defined in Article 2 and 3 of the Instructions. In view of the relatively short period of practical training, it would conflict with the purpose of Article 10 REE to allow candidates to enrol for the EQE who completed the training period under Article 10(2) REE without possessing a scientific or technical degree, diploma or certificate required under Article 10(1) REE and Articles 2 and 3 of the Instructions.

2.6 For these reasons the Board endorses the interpretation of Article 10 REE on which the decision under appeal is based. The fact that the result of this interpretation corresponds to national regulations, as e.g. § 7(1) Deutsche Patentanwaltsordnung, is merely a subsidiary consideration confirming the Board's finding.

3. Given this, there is no room for the admission of the appellant's "third type" of candidates, i.e. candidates "with a large part of a degree at the start of the training period". In its decisions D 14/93 and D 25/96, the Disciplinary Board of Appeal found that the requirements under Article 10(2) REE had to be evaluated by type, there being no possibility in an enrolment procedure of ascertaining the quality of training in individual cases. The same is true for the requirement under Article 10(1) REE, i.e. the required scientific or technical qualification. The Instructions concerning the qualifications or knowledge required for enrolment drawn up by the Examination Board based on Article 7(4) REE define certain types of degrees, diploma and certificates which are acknowledged for the purpose of Article 10(1) REE. There is no provision according to which other scientific or technical qualifications should or could be considered and evaluated in individual cases.
4. In this connection the appellant invoked, as auxiliary request, Article 9 of the Instructions according to which "cases not covered by Articles 2,3,4 or 6 will be decided upon by the Examination Board". This provision cannot, however, be understood to the effect that the Examination Board is competent to decide on the enrolment of candidates in individual cases since, according to the Article 9(4) REE prevailing the Instructions, such decisions lie clearly within the competence of the Secretariat. Rather, it appears that Article 9 of the Instructions empowers the Examination Board to decide in general, as legislator according to Article 7(4) REE, on the acknowledgement of further

types of formal qualifications not explicitly mentioned in the existing provisions.

The Disciplinary Board of Appeal is restricted, in cases concerning the EQE, to examining whether decisions taken in individual cases infringe the existing REE, its implementing regulations or higher ranking law (Article 27(1) REE; D 6/92, OJ 1993, 361). It cannot therefore act within the framework of Article 9 of the Instructions.

5. The appellant requests reimbursement of the appeal fee pursuant to Article 27(4) REE. However, since the present appeal is not successful, one of the conditions for reimbursement of the appeal fee under this provision is not met. For this reason reimbursement of the appeal fee cannot be ordered.
  
6. The appellant furthermore requests partial reimbursement of the appeal fee for language reasons based on Article 14(4) and Rule 6(3) EPC. The REE and its implementing regulations are *lex specialis* for the EPC. Unless the REE and its implementing regulations expressly refer to the EPC, only these provisions apply and not those of the EPC (D 12/97, OJ EPO 1999, 566, point 2). As far as the procedure before the Disciplinary Board of Appeal in EQE matters is concerned, Article 27(4) REE refers to part IV of the Regulation on discipline for professional representatives (OJ 1978, 91). This Regulation does not contain any provisions concerning the language of the proceedings but refers in Article 25(2) to the Additional Rules of Procedure of the Disciplinary Board of Appeal (OJ EPO 1980, 188). Article 9 of these

Additional Rules of Procedure indeed refers to the language of the proceedings. According to its paragraph 1 the language of the proceedings before the Disciplinary Board of Appeal shall be the official language of the EPO in which the proceedings were conducted before the instance whose decision is appealed against, but Rules 2 and 3(1) EPC shall apply *mutatis mutandis*. While Rule 3(1) EPC was deleted in 1990 (OJ EPO 1991, 4), Rule 2 EPC only refers to the language in oral proceedings. There is no reference to Article 14(4) and Rule 6(3) EPC. Thus, there is no legal basis for granting the appellant's request for partial reimbursement of the appeal fee for language reasons.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

P. Messerli