



**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 0004/07

D E C I S I O N
of the Disciplinary Board of Appeal
of 6 December 2007

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat dated
12 September 2007.

Composition of the Board:

Chairman: J.-P. Seitz
Members: C. Rennie-Smith
W. Kovac

Summary of Facts and Submissions

- I. The appellant, who wishes to be a candidate for the European Qualifying Examination ("EQE") to be held in March 2008, has appealed against the decision of the Examination Secretariat dated 12 July 2007 to refuse his application for enrolment for the EQE. The appellant's notice of appeal and statement of grounds of appeal were both contained in one document dated 6 August 2007 and filed on 13 August 2007 when the appeal fee was also paid.

- II. By letters from the Board of 12 September 2007, 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. Neither President replied.

- III. The appellant filed two applications for enrolment for the EQE dated 12 May 2007 and 27 May 2007. On his original application form dated 12 May 2007 he marked with a cross the boxes corresponding to Article 10(2)(a)(ii) and (iii) REE. Among the documents he filed with that form was a Certificate of training or employment also dated 12 May 2007 and completed on behalf of his employer, Abbyy Europe GmbH, by a Mr Jupp Stöpetie who was also named as the appellant's trainer. In section 2.2 of that certificate none of the boxes corresponding to Article 10(2)(a)(i), (ii) and (iii) REE were marked and no general authorisation of the candidate or, as the case may be, his training supervisor, was identified by its number as required. An e-mail to the appellant of 25 May 2007 from the

Secretariat asked him to make good these omissions and also observed that neither the

appellant nor Mr Stöpetie had a general authorisation for Abbyy Europe GmbH.

IV. In response to that e-mail, the appellant filed the second application form and a second certificate, both dated 27 May 2007. The new certificate was marked to indicate reliance on training of the types mentioned in both Article 10(2)(a)(ii) and (iii) REE; in the space for a general authorisation number was written "form attached hereto"; and, among the other papers filed therewith was a request dated 1 June 2007 and signed by Mr Stöpetie as director of Abbyy Europe GmbH for the issue of a general authorisation to the appellant to represent the company before the EPO. A further e-mail of 4 June 2007 to the appellant from the Secretariat observed that, if there had been no general authorisation prior to 1 June 2007, the necessary three year training period would not be completed by the time of the EQE. It appears that thereafter a further request for a general authorisation was made since a copy of a granted authorisation dated 16 June 2007 in favour of Mr Stöpetie is attached to the grounds of appeal.

V. The appellant's application for enrolment for the EQE was refused because the secretariat considered he had not satisfied the requirements of Article 10(2) REE. The decision under appeal gave, as reasons for refusing enrolment, that Mr Stöpetie is not a professional representative so possibility (i) of Article 10(2)(a) REE cannot apply, and that, since neither Mr Stöpetie

nor the appellant has represented their employer before the EPO, neither of possibilities (ii) or (iii) can apply either.

VI. The appellant's arguments in his grounds of appeal can be summarised as follows. He argues that his trainer or supervisor (Mr Stöpetie) should not be required to have had a general authorisation throughout the training period for three years for three reasons:

(i) First, Mr Stöpetie has been a director in charge of the company for over five years and could have had a general authorisation even before that period.

(ii) Second, the appellant asserts that there is no provision in the EPC concerning the duration of a general authorisation necessary under Article 10(2) REE and the person in charge of the company should be allowed to prove the appellant's training even if only recently given a general authorisation.

(iii) Third, the appellant refers to the words "...the Implementing Regulations permit other exceptions" appearing at the end of Article 133(2) EPC and argues that these should be applied to the present case in his favour.

VII. In a communication of 7 November 2007 containing its preliminary views, the Board observed that the appellant's arguments in his grounds of appeal (see VI above) were unlikely to succeed for substantially the reasons below. The communication concluded by saying the Board was of the provisional opinion that the appeal would have to be dismissed and invited the

appellant to make any further submissions within one month following receipt of the communication.

VIII. The appellant replied by written submissions dated 30 November 2007 in which he agreed that Mr Stöpetie is not a professional representative and cannot fulfil the requirements of Article 10(2)(a)(i) or (ii) or (iii) and further agreed that the supervisor or trainer of a candidate for the EQE must be authorised before the EPO. However, he also maintained his earlier arguments to the effect that a supervisor or trainer should not lose the right to be such simply by not having a general authorisation at the relevant time. In the appellant's opinion, anything not directly or especially forbidden should be considered permissible. The Board's views of the relevant law (see 3 below) were only assumptions. The appellant agreed with the Board's observations in its communication on his third argument (see 7 below).

IX. Although the appellant has made no request *expressis verbis*, it is clear that he requests that the decision be set aside so that he may sit the EQE in 2008. This is confirmed by the statement which appears at the end of both his statement of grounds of appeal and his answer to the Board's communication: "In view of the above mentioned arguments I appeal to admit me to sit on the EQE 2008." No request was made for oral proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. Article 10(2) REE requires that candidates must

"(a) satisfy the Secretariat that at the date of the 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 (hereinafter called "the EPC"), as an assistant to that person or those persons, in which period they have taken part in a wide range of activities pertaining to European patent applications or European patents, or

(ii) worked full-time for a period of at least three years in the employment of a natural or legal person whose residence or place of business is within the territory of the Contracting States and have represented their employer before the EPO in accordance with Article 133(3) EPC while taking part in a wide range of activities pertaining to European patent applications or European patents, or

(iii) worked full-time during a period of at least three years as an assistant to, and under the direct supervision of, one or more persons as defined in subparagraph (ii) in a wide range of activities pertaining to European patent applications or European patents, or

(b) satisfy the Secretariat that at the date of the examination they have performed the duties of examiner at the EPO for at least four years."

Of those four alternative possibilities, (a)(i) has not been relied on by the appellant (and could not be as the person he regards as his supervisor - Mr Stöpetie - is not a professional representative) and (b) cannot apply. He must therefore satisfy the provisions of Article 10(2)(a)(ii) or (iii) REE.

3. Those provisions require that an EQE candidate must either have represented his employer before the EPO "in accordance with Article 133(3) EPC" or have worked under the supervision of a person who has done so. Article 133(3) EPC, which allows employees to represent their employers, provides that they need not be professional representatives but that they must be authorised in accordance with the Implementing Regulations. Rule 101 EPC, which is the implementing provision, provides for both the filing of general authorisations which enable a representative to act in respect of all the patent transactions of a party and, if required by the EPO, the filing of authorisations by representatives acting in one or more particular cases. In the Board's judgment, the words "in accordance with Article 133(3) EPC" mean Article 10(2)(a)(ii) or (iii) cannot be complied with unless (as the case may be) the trainer or trainee has throughout the training period held an authorisation under Rule 101 EPC and, of the two types of authorisation covered by that Rule, only a general authorisation could give the person in question the necessary full-time work in a wide range of activities pertaining to European patent applications or European patents.

4. The essential facts of the present case are undisputed. The appellant agrees that neither he himself nor

Mr Stöpetie, who is put forward as his supervisor or trainer, has had a general authorisation for a period of at least three years. Therefore, neither of them can, for the purposes of the EQE to be held in 2008, be a person who has represented his employer before the EPO in accordance with Article 133(3) EPC. Thus it is clear that the Secretariat had no alternative but to refuse the appellant's application for enrolment.

5. The appellant's arguments (see VI and VIII above) cannot affect this conclusion. His first argument was that Mr Stöpetie has for over five years been a director in charge of the company which employs them both and could have had a general authorisation even before that period. While that may be so, the plain fact is that Mr Stöpetie did not have a general authorisation during or before his five years in charge of the company and therefore training under his supervision in that period cannot fall within Article 10(2)(a) REE for the reasons in the previous two paragraphs.

6. The appellant argued secondly that there is no provision in the EPC concerning the duration of a general authorisation necessary under Article 10(2) REE and the person in charge of the company should be allowed to prove the appellant's training even if only recently given a general authorisation. But the argument is quite simply incorrect: for the reasons in paragraphs 3 and 4 above, the provisions of the REE and EPC require that the general authorisation must be in place throughout the three year training period. Quite clearly only certain forms of training are allowed and

equally clearly any others are not considered permissible.

7. Third, the appellant argued that the words "...the Implementing Regulations permit other exceptions" appearing at the end of Article 133(2) EPC should be applied to the present case in his favour. However, Article 133(2) EPC concerns only the requirement that parties outside the Contracting States must be represented by professional representatives with one exception, namely filing a European patent application. The statement (as correctly cited) "...the Implementing Regulations may permit other exceptions" would, if implemented, merely allow such parties to perform one or more other acts without representation by a professional representative. Article 133(2) EPC can have no bearing whatsoever on the present case. The appellant agreed with this view in his reply to the Board's communication.

8. Since the decision under appeal was correct, and indeed was the only possible decision which could have been taken, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

J-P. Seitz