



**Case Number:** D 0004/08

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 18 December 2008**

**Appellant:** n.n

**Decision under appeal:** Decision of the Examination Secretariat dated 11 August 2008 that the appellant's application for enrolment for the European qualifying examination 2009 has been refused.

**Composition of the Board:**

**Chairman:** P. Messerli  
**Members:** R. Menapace  
P. Gendraud

## Summary of Facts and Submissions

- I. Due to a dialling error by the Appellant his application for enrolment for the EQE 2009 was not received at the EPO on 15 July 2008 as intended by him, but only on 23 July 2008 by post in the form of the original (paper) documents.
- II. By letter dated 11 August 2008 the Appellant was informed by the Examination Secretariat that his enrolment for the EQE had been refused , because for candidates who - as him - had not been previously admitted to the European qualifying examination the deadline for enrolment for the EQE 2009 was 18 July 2008 (OJ EPO 3/2008, p. 146 ff).
- III. On 20 August 2008 the Appellant filed an appeal against that decision, relying, in essence, on the following grounds:

He had adhered in good faith to the prescribed procedure by trying to send his application to the Office by telefax on 15 July 2008 - but overlooked that the machine showed a "no answer" message - and by posting the original documents on 16 July 2008. He learned about the failed fax transmission on 19 August 2008 and realized its cause, namely that he had dialled the phone number instead of the fax number of the Secretariat.

The Appellant requested that his application be deemed as regular and acceptable considering that this unfortunate chain of events would cause him an

inconvenient delay of 12 months in taking the examination.

IV. The appeal fee was paid 21 August 2008.

### **Reasons for the Decision:**

The appeal is admissible, but not allowable:

1. The appellant has not explained on what legal basis or for which legal grounds the Examination Secretariat must or could have accepted his application for enrolment despite it had been received at the EPO only after the relevant date which had been duly published pursuant to Article 20 Regulation on the European qualifying examination for professional representatives (REE). It is not disputed by him and is established jurisprudence of the Disciplinary Board of Appeal that the provisions governing the EQE, in particular the REE and the Implementing provisions, are *lex specialis* for the EPC, and that the EPC applies in connection with them only where they expressly refer to it (see D 7/05, OJ EPO 2007, 378, point 17 of the reasons, and the further decisions cited in that decision). None of the provisions of the EPC governing whether and in what circumstances the non-observation of a time limit can be regarded as excused is referred to in the provisions governing the EQE. As a consequence, there is no legal basis for accepting late filed applications for enrolment and it is correctly indicated in point 4 of the Announcement of the EQE 2009 (OJ EPO 3/2008, 146) that applications received after the closing date will be refused and that 121 and 122 EPC are not applicable.

2. Article 20 REE appears to express the legislator's intent to afford a stringent nature to the deadline for enrolment. Setting a closing date for enrolment which is binding for the candidates is both justified and necessary in view of the legitimate purpose and overwhelming importance of ensuring timely and orderly preparation of the European qualifying examination (EQE) in the interest of all the many (more than 2000) yearly candidates, an enormous and ever increasing number. Clearly, to the extent that late filed applications are accepted from individual candidates that has to be done for all candidates. Thus, when it comes to defining under which conditions, if any, the Examination Secretariat ought to accept late filed applications it is to be considered that broader admission of late filed applications could severely harm the well functioning of the EQE. Therefore, if some kind of general principles were to be applied on the modalities under which late filed applications for enrolment ought to be accepted, in the view of the Board there are good reasons to think that these ought not to be more liberal than the standard applied at present by the Examination Secretariat, which is to accept late filed enrolments in cases of "force majeure" only.
3. However, the cause of the late receipt of the appellant's application for enrolment was a dialling error on his side and the subsequent overlooking of the "no answer"- message. This does not qualify as "force majeure".

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

E. Görgmaier

P. Messerli