



Case Number: D 0006/08

D E C I S I O N
of the Disciplinary Board of Appeal
of 30 December 2008

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat of
29 July 2008 refusing the application for
enrolment for the EQE 2009.

Composition of the Board:

Chairman: J.-P. Seitz
Members: B. Günzel
T. L. Johnson

Summary of Facts and Submissions

- I. The appeal is from the decision of the Examination Secretariat of 29 July 2008 refusing the appellant's application for enrolment for the European Qualifying Examination in 2009.

As reasons for refusal the Examination Secretariat indicated that only training which was completed after a university level scientific or technical qualification had been awarded (Article 10 REE), was considered. At the date of the examination, the full-time training period of the appellant's professional activity as required under Article 10(2)(a) of the Regulation on the European qualifying examination (REE) therefore amounted to 2 years, 11 months and one week. Thus 3 weeks were lacking to complete the professional activity as required by Article 10(2)(a) REE.

- II. By a letter dated 22 August 2008, of which only a "confirmation copy" date stamped as received on 28 August 2008 is on file, the appellant appealed the decision of the Examination Secretariat and paid the appeal fee. The grounds of appeal were filed on 17 September 2008.

- III. The submissions of the appellant can be summarised as follows:

The appellant had received a full university degree ("Laurea") in electric engineering on 19 April 2002. The said degree was given to him after completing a 5 year university course. That qualification fulfilled the requirements of Article 10(1) REE. A certified copy

of the "Laurea" document issued by the University of Padova was annexed. Thereafter he had received a PhD ("Diploma di dottore di ricerca") in electric engineering on 21 March 2006, as was written in the certified copy of the said diploma which had been attached to the application for enrolment. The appellant's full-time training period had started on 1 January 2006 and was still continuing. Thus at the date of the EQE on 2 March 2009 the training period performed under university qualification will have been 3 years and 2 months, i.e. more than 3 years. Moreover, it was clear from the decree regulating the conditions for acquiring a PhD that a university degree was a necessary precondition to access a PhD course, the minimum time span between the acquisition of the university degree diploma and the possible date of a PhD diploma being 3 years. Thus, the fact that he had acquired a PhD dated 21 March 2006 meant per se that he had received a university degree before 21 March 2003. Hence, the submission of the PhD proved that the training period which started on 1 January 2006 was entirely performed after having received a university graduation.

- IV. The Presidents of the European Patent Office and of the Institute of Professional Representatives were invited to file observation on the matter. Both informed the board that they did not intend to file observations.

- V. The appellant requests that the decision of the Examination Secretariat be set aside and that he be enrolled for the EQE 2009.

Reasons for the Decision

1. According to Article 10(1) REE candidates shall be enrolled for the examination on request provided they possess a university level scientific or technical qualification. In addition, according to Article 10(2)(a)(i) REE they have to satisfy the Examination Secretariat that at the date of the examination they have completed a full-time training period of at least 3 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, 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.

2. The Examination Secretariat's refusal to enrol the appellant for the EQE 2009 is based on the ground that only training which is completed after university level scientific or technical qualification has been awarded (Article 10 REE) could be considered. The decision then simply states without further explanation of the facts of the case on which the Examination Secretariat relies that at the date of the examination the full-time training period of the appellant's professional activity as required under Article 10(2)(a) REE amounted to 2 years, 11 months and one week. Thus 3 weeks were lacking. Although this was not explained by the Examination Secretariat in its decision, it can be derived from the file that the Examination Secretariat apparently refused to take into account the full-time training period which the appellant underwent in the time span between 1 January 2006, when the

- training started according to the evidence filed by the appellant, and 23 March 2006, the date on which the PhD ("Diploma di dottore di ricerca in ingegneria elettrotecnica") was issued to the appellant.
3. The Examination Secretariat appears not to have doubted that the training the appellant underwent in the said period was a full-time training period within the meaning of Article 10(2)(a)(i) REE and on the basis of the certificates submitted by the appellant annexed to his application for enrolment, the board also sees no reasons for any doubts in this respect.
 4. Although it was not explicitly stated in the appealed decision, the Examination Secretariat appears to interpret Article 10(2)(a) REE in the sense that only such full-time training that is completed after a university level scientific or technical qualification within the meaning of Article 10(1) REE has been awarded, can be considered.
 5. In the present case the said requirement was fulfilled when the appellant started his training on 1 January 2006. As can be derived from the copy of his university degree "Laurea ingegneria elettrotecnica" filed by the appellant and the information given to the Examination Secretariat via e-mail by the "Sekretariat der ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, Zentralstelle für Ausländisches Bildungswesen (Central Office for Foreign Education)" the said diploma was acquired by the appellant after having performed and successfully completed 5 years of university studies. The board therefore concurs with the appellant that when he

started his full-time training on 1 January 2006 he already possessed a university level scientific or technical qualification within the meaning of Article 10(1) REE.

6. Hence, the deduction of the period of training accomplished between 1 January 2006 and 23 March 2006 could only have been justified if there were reasons to doubt that the training performed at that point in time was indeed a full-time training. However, neither has the Examination Secretariat questioned the correctness of the training certificates submitted by the appellant confirming full-time training nor does the board find any reason to doubt the accuracy of these certificates. The mere fact that the document attributing to the appellant a "diploma di dottore di ricerca in ingegneria elettrotecnica" is dated 23 March 2006 provides no indication that in the period in question before the attribution of that title the appellant did not undergo a full-time training. It is generally known in the academic world that there is always a certain time span between the actual completion of a thesis and the date of the attribution of the title to the candidate. Once completed, the thesis has to be assessed and often other acts not hindering a full-time employment such as for instance an oral examination or defending the subject-matter of the thesis in an oral presentation have to be performed before the title is given to the candidate.

7. Hence, the board cannot but conclude that the appellant fulfils the requirements for enrolment for the European Qualifying Examination 2009. The decision of the Examination Secretariat is seriously deficient for lack

of any verifiable indication of the facts and reasons for its decision and the board wonders, why on the appellant's appeal with which he additionally furnished a copy of the "Laurea" acquired by him in 2003, the Examination Secretariat did not grant interlocutory revision but instead forwarded the appeal to the board, thereby prolonging the situation of legal insecurity for the appellant in such an important personal matter as whether or not he would be allowed to sit the EQE 2009.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. It is ordered that the appellant be enrolled for the European Qualifying Examination 2009.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:

P. Martorana

J.-P. Seitz