



Case Number: D 0007/08

D E C I S I O N
of the Disciplinary Board of Appeal
of 2 February 2009

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat dated
6 August 2008 refusing the application for
enrolment for the EQE 2009.

Composition of the Board:

Chairman: P. Messerli
Members: B. Schachenmann
P. Gendraud

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examination Secretariat dated 6 August 2008 according to which the appellant's application for enrolment for the European Qualifying Examination ('EQE') 2009 was refused.

- II. The appellant had filed his application for enrolment on 9 July 2008. In box 4.1 of the enrolment form he indicated that he was a candidate who had worked full-time for a period of 3.5 years in the employment of a company in Spain and had represented the same before the EPO under Article 133(3) EPC as required pursuant to Article 10(2)(a)(ii) REE. As supporting evidence authorizations were enclosed which enabled him under Spanish law to sign certain documents on behalf of his employer.

- III. On 11 July 2008 the Examination Secretariat issued a communication informing him that his application for enrolment was incomplete. In particular, the enrolment form was not signed and no certified copy of his diploma was enclosed. Furthermore, it was noted that the candidate's qualification fell under Article 3a) of the Instructions concerning the qualifications required for enrolment for the EQE ('Instructions') meaning that, in addition to the training period of 3 years required under Article 10(2)(a)(ii) REE, another three years of practical experience had to be completed. Finally, it was pointed out that the 'Certificate of training or employment' did not contain any information with regard to a training period or a supervisor. The candidate was requested to rectify these deficiencies by 18 July 2008 or otherwise his application would be refused.

IV. In reply to this communication the candidate filed an amended enrolment form and a new 'Certificate of training or employment' on 18 July 2008. In the amended form it was indicated in box 4.1 that the candidate:

(a) had worked full-time, in accordance with Article 10(2)(a)(ii) REE, for a period of 3.5 years in the employment of G. and had represented this company before the EPO under Article 133(3) EPC and, in addition,

(b) had worked full-time, in accordance with Article 10(2)(a)(iii) REE, for a period of 4 years as an assistant to and under the supervision of a person as defined in Article 10(2)(a)(ii) REE.

In the new 'Certificate of training or employment' only the training period under Article 10(2)(a)(iii) REE was certified by Mr P., the general director of the employer. It was indicated that the training period lasted from 1 June 2000 to 30 April 2004. In support of Mr P.'s own activities before the EPO, two confirmations of receipt from the Spanish Patent Office for two European patent applications filed in 2002 and signed by him were included.

V. The decision under appeal (cf. point I, supra) is based on the grounds that the Examination Secretariat was not able to establish that the candidate or his supervisor had represented their employer before the EPO in accordance with Article 133(3) EPC. The submitted two confirmations of receipt from the Spanish Patent Office did not constitute such proof. In addition, no relevant

professional activity of the candidate for the additional training period of three years could be determined.

- VI. In the statement setting out the grounds of appeal the appellant submitted that he had worked for a Spanish employer during the period from 2000 to 2004. Even if Mr P., his supervisor, had signed the European patent applications filed at the EPO, it was the appellant that was responsible for drafting the application documents and for answering the examination reports. To substantiate this submission the appellant referred to five European patent applications filed in 2002 and 2003.
- VII. On 18 December 2008 the Disciplinary Board of Appeal issued a communication. It observed that, based on the new facts and evidence submitted with the grounds of appeal, a period of 3 years and 11 months of professional activity between 2000 and 2004 might be recognized under Article 10(2)(a) REE. However, as already noted in the decision under appeal, it appeared that the appellant's qualification fell under Article 3(a) of the Instructions with the effect that he needed an additional three years of experience in the patent field, i.e. a total of 6 years of professional experience. The appellant seemed to have accepted this finding of the Examination Secretariat as he never contested it. Nevertheless, there was no evidence for the lacking period of 2 years and 1 month necessary to complete the 6 years of professional experience. In this respect, the indications in the enrolment form were unclear and not supported by any evidence.

VIII. In a response of 15 January 2009 the appellant, for the first time, referred to a time period from 2005 until now and to new facts and evidence concerning his professional activity. In particular, he filed copies of authorizations of two Spanish companies for which he had worked from 2005 until now and listed some 20 European patent applications in which he had represented his employers before the EPO. The appellant requested that these additional three years and 8 months of professional activity before the EPO according to Article 133(3) EPC be recognized for his enrolment for the EQE 2009.

IX. The Presidents of the European Patent office and of the Institute of Professional Representatives were invited to file observations on the matter. Neither of them filed any comment.

Reasons for the Decision

1. The appeal meets the requirements of Article 27(2) REE and is therefore admissible.
2. Article 27(1) REE provides that an appeal shall lie from decisions of the Examination Board and the Examination Secretariat only on grounds of infringement of the REE or any provision relating to its application. Such decisions may therefore in principle only be reviewed by the Disciplinary Board of Appeal for the purposes of establishing whether they infringed the REE, provisions relating to its application or higher ranking law (D 1/92, OJ 1993, 357; D 6/92, OJ 1993,

- 361). The issue to be examined in the present case is therefore whether the decision of the Secretariat to refuse the appellant's application for enrolment for the EQE 2009 infringed the REE, any provision relating to its application or higher ranking law.
3. Considering firstly the legal basis for the enrolment procedure, Article 9(4) REE stipulates that the Examination Secretariat shall arrange for the holding of the examinations and take the necessary measures for their supervision. It shall decide on the enrolment of candidates in accordance with instructions drawn up by the Examination Board. Such instructions were adopted by the Examination Board on 19 May 1994 (Instructions concerning the qualifications required for enrolment for the European qualifying examination, OJ EPO 1994, 599).
 4. Turning now to the formalities for enrolment, Article 21(2)(b) REE provides that applications for enrolment shall be accompanied, *inter alia*, by "a certificate or certificates issued by a professional representative or by the candidate's employer, attesting to the completion of a period of training or employment required by Article 10(2)(a) REE and indicating the nature and the duration of the duties performed by the candidate". Accordingly, Article 7 of the Instructions provides that the enrolment form shall be accompanied by any certificate verifying the training work showing that the candidate meets the requirements of Article 10(2) REE.
 - 4.1 An enrolment form for the EQE 2009 drawn up in accordance with these provisions was published in

Official Journal EPO 2008, 146. The appellant's application was based on this form. Its point 4 specifically concerns the periods of professional activity. In sub-point 4.1 the type of activity has to be specified by marking one of three boxes. Point 5 refers to the supporting evidence for points 3 and 4 and, in particular, to supporting evidence for point 4.1 referred to above. It ends with the warning: "All necessary supporting evidence must be filed together with the enrolment form".

4.2 As concerns the filing of the application, point 12 of the enrolment form stipulates that the application for the EQE 2009 must reach the Examination Secretariat no later than 18 July 2008. In the Announcement of the EQE 2009 (published in the OJ EPO 2008, 146) it is stated in point 4 that applications received after that date or which are incomplete will be refused. Finally, when signing the application for enrolment the candidate declares in point 13 of the enrolment form that he or she is aware "that filing incomplete, late or unsigned applications (...), filling in documents incorrectly or incompletely, (...) may lead to non-acceptance of the application".

5. As follows from the above summary, the enrolment procedure for the EQE is based on a comprehensive set of regulations contained in the REE and its implementing provisions. The Examination Secretariat is the organ responsible to apply these provisions. In doing so the Secretariat has to observe the standards of a fair procedure as higher ranking law.

6. In the circumstances of the present case the Disciplinary Board of Appeal is satisfied that the Examination Secretariat neither infringed the provisions referred to above nor treated the appellant in an unfair way, for the following reasons.
 - 6.1 Firstly, it is noted that the appellant's application for enrolment of 9 July 2008 indeed was incomplete. It clearly did not meet the requirements of Article 21(2)(b) REE and Article 7 of the Instructions (see point III, supra). The Examination Secretariat correctly reacted by issuing a communication by fax on 11 July 2008 pointing out several deficiencies and giving the appellant the opportunity to rectify and complete his application by 18 July 2008 (the closing date for enrolment). The Secretariat also indicated that otherwise the application would be refused. Thus, it cannot be seen that in this phase of the proceedings the Examination Secretariat infringed any provisions or acted in an unfair way.
 - 6.2 The amended enrolment form filed on 18 July 2008 in response to the communication was still incomplete. It now referred to two periods of training, a period of 3.5 years in accordance with Article 10(2)(a)(ii) REE and a period of 4 years in accordance with Article 10(2)(a)(iii) REE (see point IV., supra). However, the certificate of training enclosed only concerned the period from 1 June 2000 to 30 April 2004. For the other period neither an employer was specified nor a certificate of training or employment was submitted.

6.3 The Examination Secretariat was correct to decide on the basis of the facts and evidence submitted until 18 July 2008 and to refuse the application on this basis. As follows from the provisions referred to above, it was the candidate's responsibility to file all necessary supporting evidence together with the enrolment form by the closing date for enrolment.

7. The appellant never contested the correctness of the findings in the decision under appeal. Instead, in support of his appeal, he referred to new facts and evidence concerning his professional activity from 2000 to 2004. In response to the communication of the Disciplinary Board of Appeal, the appellant submitted still further facts concerning the training period from 2005 until now (see point VIII, supra). However, since all these new facts and evidence were filed clearly after the closing date for enrolment, they can no longer be considered in the enrolment proceedings for the EQE 2009. It is not up to the Disciplinary Board of Appeal to open new enrolment proceedings based on facts and evidence filed after the closing date for enrolment. It can therefore be left open whether or not the appellant could have been admitted to the EQE, had he submitted all relevant facts and evidence before the closing date for enrolment.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

P. Messerli