



Case Number: D 0012/08

D E C I S I O N
of the Disciplinary Board of Appeal
of 02 February 2009

Appellant: N.N.

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

Composition of the Board:

Chairman: J.-P. Seitz
Members: R. Menapace
T. L. Johnson

Summary of Facts and Submissions

- I. On 11 July 2008 the appellant's application for the European qualifying examination ("EQE") 2009 was received. It was accompanied by EPO Form 51014.6 01.8 "Certificate of training or employment under Articles 10(2)(a) and 21(2)(b) REE" drawn up by the Office and published together with the Announcement of the EQE 2009.
- II. However, said form had been incompletely filled in: Whereas in point 2.2 after "It is hereby certified that the above candidate has completed a period of practical training under" the first box "under Article 10(2)(a)(i) of the Regulation on the EQE" was crossed, in point 2.3 only the beginning of the training period was indicated ("From: 21 November 2005 to:"). Furthermore, nothing was stated under point 2.4 ("Will the candidate continue to be trained by you in patent matters until 2 March 2009?") and Point 2.5 ("Was the candidate trained full-time throughout the period indicated under points 2.3 and 2.4?")
- III. The date by which applications for enrolment for the EQE 2009 and the required documents had to be filed (Article 20 REE) was 18 July 2008 (OJ EPO 2008, 146).
- IV. On that same day the Examination Secretariat sent a fax to the appellant, which contained the following text:
- "The certificate of training is incomplete. The information under points 2.3, 2.4 and 2.5 is missing. The certificate does therefore not constitute proof of the required training.

You are requested to rectify the above mentioned points until 1 August 2008 as otherwise your application will be rejected."

- V. In response a completed version of the certificate was prepared, but not filed because of a clerical error.
- VI. By letter of 11 August 2008 the Examination Secretariat informed the Appellant that her application for enrolment for the EQE 2009 had been refused on the ground that "since we have not received such a valid certificate we could not establish any relevant training according to Article 10(2)(a) REE and the conditions for enrolment are not met".
- VII. On 3 September 2008 the appellant filed an appeal against the refusal of the application. The appeal fee was duly paid on the following day. In support of her request that the decision under appeal be set aside and that her application for enrolment for the EQE 2009 be accepted she argued, that on the basis of the information in the certificate as filed on 7 July 2008 the Examination Secretariat could, in fact, establish the completion of the required training period (Article 10(2)(a) REE): The professional representative who had issued the certificate had "certified the completion of at least three years full-time practical training period at the date of the examination under Article 12(2)(a)(i) REE flagging the box t 22 of the Certificate. The information about the date of starting of my training period (November 21, 2005) at the point 2.3 of the Certificate [...] together with the declaration [...] at point 2.2 that I will complete

at least a three years period of practical training under Article 10(2)(a)(i) REE are sufficient ..."

Reasons for the Decision:

1. The appeal is admissible.

2. Pursuant Article 10(2)(a) REE candidates who apply for enrolment for the EQE must "be able to satisfy the Secretariat that at the date of the examination they have
 - (i) completed a full-time training period of at least three years under the supervision of [a professional representative within the meaning of Article 134(1) EPC], or
 - (ii) worked full time for a period of at least three years in the employment of a natural or legal person [...] and have represented their employer before the EPO [...], or
 - (iii) worked full time for 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)"

Pursuant to the following paragraph 3 of the same Article the duration of periods of professional activity in question may be aggregated to make up a total training period of three years.

Applications for enrolment shall be accompanied by "a certificate or certificates issued by a professional representative [...] attesting to the completion of a training period [...] required by Article 10(2)(a) and

indicating the nature and duration of the duties performed by the candidate" (Article 21(2)(b) REE).

3. The appellant's argumentation apparently relies on the fact that Article 10(2)(a)(i) REE, like the following subparagraphs each defining the type of activity required, contains the wording "a period of at least three years"; hence - she contends - , where in the EPO form used for the certificate the box referring to subparagraph (a)(i) of said provision is crossed, the certification covers also the three year requirement.

4. Such a meaning of the crossing of the first box under point 2.2 of the certificate is, however, at variance with the wording and structure of the form and its purpose, and disregards the factual and legal context: As there is no requirement that the three year training period must be served without interruption and periods of professional activity of any of the three types defined in Article 10(2)(a) REE and referred to in point 2.2 of the form may be added up for the three years needed, a statement that "a" (sic!) period of practical training of one type has been completed and the indication of its starting date cannot, logically or reasonably, constitute a positive certification of a qualified training during three years on a full time basis. Moreover, such an interpretation of the (incomplete) certificate under consideration is also excluded by the fact that it was signed by the responsible professional representative on 7 July 2008 - that is considerably less than three years after the indicated starting date of the candidate's relevant practical training - and is silent on the question of whether the candidate will (continue to) be trained by

the certifying professional representative until the EQE 2009 (point 2.4 of the certificate).

5. There is also no point in considering the deficiency as having been caused by a misunderstanding or anything attributable to the Office. Rather, the failure to file a valid certificate in time was, in the present case, admittedly due to a mistake on the side of the appellant, namely first the filing of a visibly incomplete certificate and then, after having been invited to remove that deficiency, the failure to actually file the duly completed certificate.

6. The Board is well aware of the harsh consequences for the appellant, but has, as well as the Examination Secretariat, to decide on the basis of the REE. Their Article 20 appears to express the legislator's intent to afford a stringent nature to the deadline for enrolment and the filing of the accompanying documents. Fixing a binding time limit for rectifying an incomplete certificate pursuant to Article 21(2)(b) REE 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. Clearly, to the extent that late filed certificates are accepted from individual candidates that has to be done for all candidates and, therefore, could severely harm the functioning of the EQE.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

P. Martorana

J.-P. Seitz