



**Beschwerdekammer in Disziplinarangelegenheiten**  
**Disciplinary Board of Appeal**  
**Chambre de recours statuant en matière disciplinaire**

Boards of Appeal of the  
European Patent Office  
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**Case Number:** D 0009/17

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 2 February 2018**

**Appellant:** N.N.

**Decision under appeal:** Decision of the Examination Secretariat of  
23 May 2017 to refuse registration for the  
European qualifying examination.

**Composition of the Board:**

**Chairman:** G. Weiss  
**Members:** L. Bühler  
T. Johnson

## **Summary of Facts and Submissions**

- I. On 30 March 2017, the appellant registered for the European qualifying examination pre-examination 2018.
- II. With letter of 23 May 2017, the Examination Secretariat informed the appellant of its decision to refuse its registration for the European qualifying examination. The reason was that the requirements of Rule 11(2) of the Implementing provisions to the Regulation on the European qualifying examination for professional representatives (IPREE, OJ EPO 2017, Supplementary publication 2, 18) were not fulfilled.
- III. With fax of 29 June 2017, the appellant together with her representative (Article 17 of the Regulation on discipline for professional representatives, RDR, OJ EPO 2017, Supplementary publication 1, 127, together with Article 24(4) of the Regulation on the European qualifying examination for professional representatives, REE, OJ EPO 2017, Supplementary publication 2, 2) filed notice and grounds of appeal. Page 12 of this fax was a debit order, giving the authorisation to debit the appeal fee from the representative's account.
- IV. On 30 June 2017, the appellant was informed by the Examination Secretariat by email and in a telephone conversation that the appeal fee had to be paid by way of bank transfer to the account indicated in an earlier email of 27 June 2017.
- V. In reply to questions from the appellant, the Examination Secretariat confirmed on 3 July 2017 that the date of payment would be the date when the payment was received

on the EPO bank account, and further referred to Article 7 of the Rules relating to Fees (RFees).

VI. With letter of 18 July 2017, the Examination Secretariat informed the appellant of its decision not to rectify its decision of 23 May 2017 and remitted the appeal to the Disciplinary Board of Appeal (in the following Appeal Board). The Examination Secretariat noted that no appeal fee had been received by that date.

VII. On 31 August 2017, the Appeal Board sent a communication noting that the appeal fee had not entered a bank account held by the EPO within the time limit for appeal pursuant to Article 24(2) REE and that the legal texts did not provide for the debiting of deposit accounts with fees pursuant to Article 17 REE. As a consequence the appeal was deemed not to have been filed. Referring to decision D 6/82, OJ EPO 1983, 337, the Appeal Board informed the appellant that re-establishment of rights in respect of the time limit for payment of the fee for appeal was available as an extraordinary means of judicial remedy pursuant to Article 24(4) REE together with Article 24(2) RDR. No reply and no request for re-establishment were received within the time limit set.

VIII. The appellant requested

- (a) that the decision under appeal be set aside and the appellant registered for the European qualifying examination pre-examination 2018;
- (b) alternatively, that an additional period of professional experience be taken into account under Rule 14 IPREE;

- (c) oral proceedings in case the appeal was not allowed on the basis of the main request.

## **Reasons for the Decision**

1. Pursuant to Article 24(2) of the Regulation on the European qualifying examination for professional representatives (REE, OJ EPO 2017, Supplementary publication 2, 2), notice of appeal including the statement setting out the grounds for appeal must be filed in writing with the Examination Secretariat within one month of the date of notification of the decision appealed against. Notice of appeal is not deemed to have been filed until the fee for appeal specified pursuant to Article 17 REE and Rule 9 of the Implementing provisions to the Regulation on the European qualifying examination for professional representatives (IPREE, OJ EPO 2017, Supplementary publication 2, 18) has been paid within the same period. The appeal fee is EUR 1 200 (see Rule 9 IPREE and Article 1 of the decision of the President of the European Patent Office dated 2 February 2012 revising the basic fee for the European qualifying examination, OJ EPO 2012, 210). In the present case, the appeal fee had to be paid by Monday, 3 July 2017 (Article 24(4) REE together with Articles 21(2) and 24(1) of the Regulation on discipline for professional representatives [RDR, OJ EPO 2017, Supplementary publication 1, 127] and Rules 126(2), 131(2) and (4) and 134 EPC).
2. Only a debit order giving the authorisation to debit the appeal fee from the representative's account was received within one month of the date of notification of the

contested decision. The question thus arises whether a debit order is an allowable method for paying the fee for appeal in accordance with Article 24(2) REE.

3. Pursuant to Article 24(2) REE, notice of appeal including the statement setting out the grounds for appeal must be filed with the Examination Secretariat. Consequently, the fee for appeal pursuant to Article 17 REE and Rule 9 IPREE also has to be paid to the Examination Secretariat. However, neither the REE nor the IPREE determine the way in which the fee for appeal is to be paid. The question arises therefore whether the Rules relating to Fees apply, at least mutatis mutandis, to the payment of appeal fees for appeals lodged under Article 24(2) REE.
  
4. According to Article 1(a) of the Rules relating to Fees (RFees), fees and expenses which the President of the Office lays down pursuant to Article 3(1) RFees are levied in accordance with the provisions of those rules. Article 3(1) RFees relates to fees and expenses for any services rendered by the European Patent Office other than those specified in Article 2 RFees. Although the European Patent Office does not as such provide services - and certainly does not assume responsibilities - for the organisation and conduct of the European qualifying examination under the REE and the IPREE, it does provide the responsible bodies, namely the Examination Secretariat, with the necessary staff and capital appropriations for their functioning. This contribution of the EPO is reflected by Article 17 REE, according to which the President of the EPO lays down the amount of the fees provided for in the REE after consultation of the Institute of Professional Representatives before the EPO (epi). The fees levied pursuant to Article 17 REE and

the implementing regulations can thus be regarded as relating to services rendered by the Office in the broadest sense. Finally, the Examination Secretariat also relies on the infrastructure of the EPO, including its financial administration. For these reasons, the Rules relating to Fees apply, at least *mutatis mutandis*, to the payment of appeal fees for appeals lodged under Article 24(2) REE.

5. Pursuant to Article 5(1) RFees, the appeal fee is to be paid by payment or transfer to a bank account held by the Office. The President of the Office may allow other methods of paying fees (Article 5(1) RFees). However, there are no allowable alternative methods in the present case.
6. According to point 6.1 of the Arrangements for deposit accounts (ADA, OJ EPO 2015, Supplementary publication 3, 8), deposit accounts may be debited only in respect of fees, expenses and prices payable to the EPO in connection with European and PCT proceedings. As an exception, deposit accounts may be debited with epi members' annual subscriptions (point 11 ADA). However, the ADA do not provide for the debiting of deposit accounts with fees pursuant to Article 17 REE. Thus, the only allowable method of payment is by way of payment or transfer to a bank account held by the Office.
7. With respect to the filing of an appeal directed against the decision of the Examination Secretariat of 23 May 2017 to refuse registration for the European qualifying examination, the debit order of 29 June 2017 is to be disregarded, since it does not constitute an allowable method of payment. In its letter of 30 June 2017 the

Examination Secretariat informed the appellant of the correct way in which the fee for appeal had to be paid. However, the appellant did not avail herself of the possibility to pay the fee for appeal in accordance with the instructions received. As a consequence, and since there is no evidence on file that the appeal fee has been paid by payment or transfer to a bank account held by the Office within the period according to Article 24(2) REE, the appeal is deemed not to have been filed.

8. Pursuant to Article 13 RDR, oral proceedings take place either at the instance of the disciplinary body if it considers this to be expedient or at the request of the party. Article 116 EPC does not apply to proceedings before the disciplinary bodies (Article 25(1) RDR).
  
9. The appellant has requested oral proceedings in case the appeal is not allowed on the basis of the main request to set aside the contested decision and to register the appellant for the European qualifying examination pre-examination 2018. However, no request for oral proceedings has been filed with respect to the question raised in the board's communication as to whether or not an appeal is deemed to have been filed. Considering that the question whether an admissible appeal exists is to be examined by the Appeal Board ex officio, and that the appellant was given an opportunity to comment on the reasons for the present decision but did not avail herself of that opportunity, the Appeal Board does not consider oral proceedings to be expedient.

**Order**

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

The appeal is deemed not to have been filed.

The Registrar:

The Chairman:

T. Buschek

G. Weiss