



Beschwerdekammer in Disziplinarangelegenheiten

Disciplinary Board of Appeal

Chambre de recours statuant en matière disciplinaire

Boards of Appeal of the
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Case Number: D 0004/18

D E C I S I O N
of the Disciplinary Board of Appeal
of 5 May 2020

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat of
9 February 2018 refusing an application for
registration for the European qualifying
examination under Article 11(1) (a) REE and Rule
11(2) IPREE.

Composition of the Board:

Chairman: I. Beckedorf
Members: T. Karamanli
S. Colombo

Summary of Facts and Submissions

- I. The appeal lies from the Examination Secretariat's finding in its decision posted on 9 February 2018 that the conditions laid down in Article 11(1)(a) of the Regulation on the European qualifying examination for professional representatives (REE, OJ EPO 2019, Supplementary publication 2, 2) and Rule 11(2) of the Implementing provisions to the Regulation on the European qualifying examination (IPREE, OJ EPO 2019, Supplementary publication 2, 18) for registration for the European qualifying examination had not been fulfilled.

The Examination Secretariat held that the scientific and/or technical proportion of the appellant's Bachelor's degree in "Civil Engineering" from Shanghai University, People's Republic of China, on which his request for registration filed on 27 December 2017 with the Examination Secretariat was based, amounted to a maximum of 60.9% (214,5 out of 352 credits) only. In that percentage it took into account the appellant's "Graduation Project/Design (Thesis)" although the subject of his thesis was not known. However, it did not consider the courses "Physical Education, College English, ... Graduation Practices" (cf. the list in point 2.3 of the contested decision) to be either scientific or technical. The Examination Secretariat also converted the credits into "class hours" as per the transcript of records. The calculation of the course hours on the basis of the "class hours" resulted in a technical/scientific proportion of 61.6% (2 335 out of 3 790 course hours).

- II. By letter dated 5 March 2018, the appellant appealed this decision and filed further evidence and an English translation of various documents (Appendixes 1 to 8). He requested that the decision under appeal be set aside and that his request for registration of 27 December 2017 with the Examination Secretariat be allowed pursuant to Article 11(1)(a) REE and Rules 11(2) and 13 IPREE. In the alternative, he requested oral proceedings.
- III. By letter of 4 April 2018, the Examination Secretariat informed the appellant that after a preliminary evaluation of the grounds of appeal it seemed that the modules "Cognition Practice" and "Graduation Practice" were practical modules which the appellant had completed in companies as industrial internships rather than study courses completed at Shanghai University. Following the long-established practice of the Examination Secretariat and as confirmed by recent decisions, as e.g. D 1/12 and D 2/12, such internships were not taken into account for the calculation of the technical/scientific content of the appellant's Bachelor's degree. Since these modules appeared to be decisive elements in the assessment of the appellant's academic qualification, the Examination Secretariat had to be able to verify the requirements of his degree according to the official legal framework, i.e. the study regulations pertaining to his degree as issued by Shanghai University. Since the documents provided by the appellant were either in Chinese only or partially translated by him, he was invited to file official translations of all relevant parts of the Bachelor's and Associate's Degrees Programs, Year 2002, from Shanghai University (Appendix 1 of his appeal) and of the Bachelor's Degree Program of Department of Civil Engineering, Year 2002, from Shanghai University

(Appendix 2 of his appeal) in one of the EPO official languages.

- IV. By letter 30 April 2018, the appellant provided the required official English translations of the relevant parts of the Bachelor's and Associate's Degree Programs from Shanghai University (Appendix 9) and of the Bachelor's Degree Program of Department of Civil Engineering from Shanghai University (Appendix 10). He also filed a copy of the Regulation on Off-campus Practice Education of Shanghai University and an English translation thereof (Appendix 11).

With respect to decisions D 1/12 and D 2/12, he argued that his case substantially differed from the facts and submissions underlying these decisions since, as evidenced by the Regulation on Off-campus Practice Education of Shanghai University (Appendix 11), the two practices in his civil engineering Bachelor's degree were not industrial internships but scientific/technical courses at Shanghai University. However, if the Examination Secretariat believed that those two practices were industrial internships, the respective course hours should be removed from the general calculation as it had been done in cases D 1/12 and D 2/12, with the result that the technical/scientific proportion of his engineering degree was 82.31% (3 115 - 160 out of 3 750 - 160 hours).

- V. The Examination Secretariat sent a letter dated 25 May 2018, including as attachment a revised calculation of the technical/scientific course hours, to the appellant.

The Examination Secretariat informed the appellant that, after due consideration of all the documents and

the arguments brought forward, his appeal was not allowed, and it gave reasons for that.

In points 4 and 5 of this letter, the Examination Secretariat informed the appellant inter alia as follows:

- On the basis of the appellant's additional documents provided in his appeal, the courses "Organization and Management of Construction", "Retrieval and Application of Document" and "Approximate Estimate and Budget" could still not be regarded as scientific/technical courses as defined in Rule 13 IPREE.

- Based on the new evidence (official English translations of Appendixes 1 and 2 in Appendixes 9 and 10), the conversion of credits into course hours had been revised. According to Rule 2, point 3, paragraph 2 of the Regulations on Implementation of Credit System (Appendix 9), only those courses had been considered for which actual course hours apply: theoretical teaching courses, experiments and computer-related courses and group activities; but there were no course hours considered for individual activities. Accordingly, no course hours applied for the courses "Graduation Project/Design (Thesis)" and "Graduation Practices", which were considered as individual activities by Shanghai University.

In point 6 under the title "Decision" of this letter, the Examination Secretariat informed the appellant

- that the revised calculation of the Examination Secretariat led, with respect to the credits, to

the result of a maximum of 73% (225,5 out of 309 credits) and, with respect to the course hours, to 74.2% (2 425 out of 3 270 course hours), and

- that its decision dated 9 February 2018 was maintained and, consequently, the appeal had been forwarded to the Disciplinary Board of Appeal of the EPO.

VI. By letter of 25 May 2018, the Examination Secretariat remitted the appeal to the Disciplinary Board of Appeal of the EPO (hereinafter "Board") without rectifying its decision.

VII. The President of the Council of the epi and the President of the European Patent Office (EPO) were given the opportunity to comment pursuant to Article 12 of the Regulation on discipline for professional representatives (RDR, OJ EPO 2018, Supplementary publication 1, 126) in conjunction with Article 24(4) REE.

VIII. By letter of 11 July 2018, the appellant filed an "Attestation from Academic Affairs Office of Shanghai University" dated 19 June 2018 and an English translation thereof (Appendix S1).

He argued that the Examination Secretariat's revised calculation of the technical/scientific proportion of the appellant's degree was incorrect for the following reasons:

- (a) Scientific/technical course hours (600 hours) could be awarded for the courses "Graduation Project/Design" and "Graduation Practice". First, these courses belonged to Practice Education, a part of

university courses as stipulated in the degree programme, with the purpose of education by integrating theory and practice across a range of settings. "Graduation Practice" course belonged to "Off-campus Practice", whereas "Graduation Project/Design (Thesis)" course did not belong to "Off-campus Practice" and was conducted in classroom, laboratory, computer lab, on campus. Second, the content of both courses referred to a project of "CIVIL AIR DEFENSE ENGINEERING OF UNDERGROUND GARAGE", which was a complex civil engineering project including construction technologies, mechanics, electronics, physics, chemistry, mathematics, and other scientific/ technical subject-matter. Third, the Examination Secretariat had acknowledged that both courses were scientific/ technical and 30 credits were included in the credit calculation by the Examination Secretariat.

For both courses, course hours could be awarded under Rule 2, point 3, paragraph 2, of the Regulations on Implementation of Credit System of Shanghai University dated August 2000. First, although individual and group activities could be calculated by respective methods, each credit in Practice Education corresponded to the same course time, i.e. one credit equalled 20 course hours or 0,5 course week. Second, a conversion of course weeks to course hours should be made within the framework of the education system of Shanghai University. Third, the note in the Transcript of Academic Record (Appendix 5) indicated that for the Experiment and Practice courses, one credit equalled to 20 class hours and therefore Practice Education courses could be calculated in terms of class hours (1 credit = 20 class hours, regardless

of their group or individual characteristics). Therefore, as the courses "Graduation Project/ Design (Thesis)" and "Graduation Practice" corresponded to 30 credits, 600 course hours should be awarded, which had also been attested by the "Attestation from Academic Affairs Office of Shanghai University" and the English translation thereof (Appendix S1).

(b) As had also been attested by the Attestation issued by the Academic Affairs Office of Shanghai University (Appendix S1), the two "College English" courses (V) and (VI) were exempted courses, and their corresponding course hours (90 hours) should be removed from the general calculation.

(a) The courses "Organization and Management of Construction", "Retrieval and Application of Document" and "Approximate Estimate and Budget" should be regarded as scientific/technical courses as defined in Rule 13 IPREE, since these courses included subject-matter defined in Rule 13 IPREE and said provision did not exclude interdisciplinary subject-matters. Therefore, 10 credits and respective 100 course hours should be considered in the calculation.

IX. By letter dated 27 February 2019, the appellant filed his consent to a shorter notice period in accordance with Rule 115(1), second sentence, EPC.

X. By a communication dated 26 March 2019, the appellant was summoned to oral proceedings on 13 May 2019.

In an annex to this communication, the Board informed the appellant of its preliminary opinion. In

particular, the Board pointed out that the crucial point in the present case was whether 600 course hours could be awarded for the courses "Graduation Project/Design (**Thesis**)" (emphasis added by the Board) and "Graduation Practice" and provided its following preliminary view:

It was clear from the wording of Rule 2, point 3, of the Regulations on Implementation of Credit System of Shanghai University dated August 2000 that, regarding Practice Education, no course hours applied for individual activities but only for group activities. Hence, the relevant issue in the present case was whether the courses "Graduation Project/Design (Thesis)" and "Graduation Practices" were to be considered as individual activities for which no course hours applied. It appeared from the title "Graduation Project/Design (Thesis)" and from the very high number of credits (26) for this subject that this concerned the Bachelor's thesis which, in its very nature, was an individual activity of a Bachelor's student. Consequently, in view of Rule 2, point 3, of the Regulation on Implementation of Credit System of Shanghai University dated August 2000, it seemed not justified to convert the respective 26 credits into course hours. The Board, taking into account the appellant's submissions, was also not persuaded that the course "Graduation Practices" was a group activity. It was noted that the appellant had filed the "Attestation issued by Academic Affairs Office of Shanghai University" (Appendix S1) in support of his submission that the "*courses of Graduation Project/Design (Thesis) and Graduation Practice corresponded to 30 credits and 600 course hours in total*". However, this attestation did not contain any explanations as to why these courses could be considered as a group

activity or an individual activity, and if the latter applied, on which basis the respective 30 credits could be converted into 600 course hours in view of the wording of Rule 2, point 3, of the Regulation on Implementation of Credit System of Shanghai University dated August 2000. Thus, the attestation did not certify the claimed course hours in a plausible and comprehensible manner.

XI. By letter dated 13 April 2019, the appellant filed new arguments and new evidence.

He argued that the Attestation issued by the Academic Affairs Office of Shanghai University (Appendix S1) was an official and valid certificate from Shanghai University and therefore it certified beyond all reasonable doubts, that the courses Graduation Project/Design (Thesis) and Graduation Practice corresponded to 30 credits and 600 course hours in total. According to the Chinese higher education system, a Bachelor's degree had not to be finished with a thesis alone like a PHD as in Europe. As could be derived from the content of the course Graduation Project/Design (Thesis) (Appendix 8), this course was not a scientific research paper or thesis but a complete construction project design of a civil engineering where the project had to be designed by teamwork. Thus this course was a group activity.

XII. By a further letter dated 24 April 2019, the appellant filed a further "Certificate from Academic Affairs Office of Shanghai University" dated 24 April 2019 and an English translation thereof from the appellant (Appendix S2) regarding the courses Graduation Project/Design (Thesis) and Graduation Practice. He also argued that the Chinese Communist Party compulsory courses

("Principles of Marxism Philosophy", "Principles of Marxist Political Economy", "Introduction to Mao Zedong's Thoughts" and "Deng Xiaoping's Theory") should be not taken into account for the calculation of the course hours.

XIII. By a further letter dated 29 April 2019, the appellant filed a "formal English translation" (Appendix S3) of the Certificate from the Academic Affairs Office of Shanghai University dated 24 April 2019 (Appendix S2).

XIV. The oral proceedings before the Board on 13 May 2019 were attended by the appellant, his legal representative (Article 24(4) REE together with Article 17 RDR), a person appointed by the President of the Council of the epi and a person appointed by the President of the EPO (Article 24(4) REE together with Article 14 RDR).

The appellant filed a complete version of Appendix 8 with a copy of the "Graduation Project of Civil Engineering (Thesis)" in Chinese, to which he had contributed.

The appellant requested

that the decision under appeal be set aside and that his request for registration of 27 December 2017 on the basis of his Bachelor's degree in "Civil Engineering" be granted under Article 11(1) (a) REE and Rule 11(2) IPREE.

As an auxiliary measure, the appellant requested

that the proceedings be continued in writing and

that a three-month period be set by the Disciplinary Board, in which the appellant could provide further evidence with respect to the Graduation Project/Design (Thesis) at Shanghai University.

At the end of the oral proceedings, the chairman informed the appellant and the representatives of the EPO and the epi as follows:

"1. The proceedings are continued in writing.

2. Within a period of three months as of 13 May 2019, the appellant may provide further evidence in respect of the technical content of the Graduation Project (Thesis) at the Shanghai University, in particular in respect of:

- the description of the graduation project;*
- the names of the participating students and of the professor(s) supervising the project;*
- the relevant dates and periods of the project.*

3. With the explicit agreement of the appellant, the final decision will be taken in writing after the lapse of the aforementioned period or after the timely filing of the aforementioned evidence."

XV. By letter dated 13 June 2019 and received by the EPO on 17 June 2019, the appellant filed the following further evidence:

- a copy of the Graduation Project Achievement Assessment, compiled and documented by the Civil Engineering Department of Shanghai University during the graduation project assessment and examination in 2006 and an English translation

thereof (Appendix S4);

- a copy of the Certificate of the Graduation Project Course issued by the Civil Engineering Department of Shanghai University on 5 June 2019 and an English translation thereof (Appendix S5).

Reasons for the Decision

1. The appeal is admissible.

Fresh case on appeal

2. The Examination Secretariat must base its decisions on requests for registration for the European qualifying examination solely on the facts and evidence submitted by the candidate. When making a request for registration, candidates who want a decision in their favour must therefore submit appropriate evidence and information on their own initiative.
3. Moreover, it is not the purpose of appeal proceedings pursuant to Article 24(1) REE to give appellants the opportunity to amend their initial case for registration as they see fit. Indeed, Article 24(1) REE states that an appeal lies from decisions of the Examination Board and the Secretariat only on grounds of infringement of the REE or any provision relating to its application. As a rule, therefore, such decisions may be reviewed by the Board only for the purposes of establishing whether they infringe the REE, provisions relating to its application or higher-ranking law

(D 1/92, OJ EPO 1993, 357; D 6/92, OJ EPO 1993, 361). This means that appeals are primarily examined on the basis of the facts and the evidence on which the appealed decision was based. It is thus normally not for the Board to decide in place of the Examination Secretariat on requests for registration based on facts or evidence which are presented for the first time on appeal.

4. According to point 2.1 of the contested decision, the appellant's request for registration for the European qualifying examination was based on certified copies (and English translations thereof) of the degree certificate and academic transcript of records for a four-year Bachelor's degree in "Civil Engineering" from Shanghai University, People's Republic of China. With his appeal, as well as in response to an inquiry by the Examination Secretariat and in the subsequent course of the proceedings before the Board (see points II, IV, VIII, and XI - XV above), the appellant provided further information and further evidence in respect of his degree, in particular in respect of his calculation of the credits and course hours, respectively.

5. Where new facts and evidence submitted on appeal require that the Board reassesses whether the conditions for registration for the European qualifying examination laid down in Article 11(1)(a) REE and Rule 11 IPREE are fulfilled, the Board takes the view that the following options are open to it as to how to proceed (see also decision D 3/18, point 1.4):

Pursuant to Article 24(4) REE in conjunction with Article 25(1) RDR and Article 114(2) EPC, the Board may disregard facts or evidence which are not submitted in due time. However, if such new facts and evidence are

disregarded and the appeal is dismissed, the question is then whether the dismissal precludes the filing of a new request for registration with the Examination Secretariat based on the facts and evidence on which the appellant was unable to rely in the appeal proceedings and on which no substantive decision has been taken. Should the matter not be regarded as definitively settled by the Board's decision, a new request for registration may be filed, which will lead to a further decision by the Examination Secretariat, which will likewise be open to appeal.

Another option available to the Board is to take the new facts and evidence into consideration but restrict its review to examining whether the Examination Secretariat contravened the Regulation on the European qualifying examination for professional representatives or any provision relating to its application (Article 24(1) REE) and/or whether the new facts and evidence are likely to have a bearing on the outcome of the case. Should the Board's review reveal that the decision under appeal infringes the legal provisions and/or that the new facts and evidence are liable to deprive the decision of its basis, it may remit the case to the Examination Secretariat for consideration of those new facts and evidence (Article 24(4) REE in conjunction with Article 25 RDR and Article 12 of the Additional Rules of Procedure of the Disciplinary Board of Appeal, OJ EPO 2020, Supplementary publication 1, 68), especially if settling the matter involves a discretionary decision. While the conditions laid down in Article 11(1)(a) REE and Rule 11 IPREE for registration for the European qualifying examination leave little room for taking factors into consideration which are not explicitly addressed in these provisions, the Examination Secretariat can nevertheless exercise a

certain amount of discretion when evaluating a candidate's qualifications for the purposes of deciding on the candidate's registration for the European qualifying examination.

Lastly, depending on the particular circumstances, it may even be appropriate for the Board not only to admit the new facts and evidence into the appeal proceedings but also to decide in place of the Examination Secretariat on whether or not the candidate can be registered.

6. In the present case, the Board notes that the appellant's step-wise submission of a whole series of amendments to his case amounts to a rather unconventional procedural approach which has stretched the proceedings before the Board to their limits. However, the Board also considered the case in hand to be marked by exceptional circumstances beyond the appellant's direct control, and thus decided to admit the evidence and arguments filed by letters dated 5 March 2018, 30 April 2018, 11 July 2018, 13 April 2019, 24 April 2019, 29 April 2019 and 13 June 2019 as well as those presented at the oral proceedings, despite their belated submission, in order to spare the appellant the uncertainty over the outcome of a new request for registration with the Examination Secretariat. As to the extent of review, the Board examined whether the appellant's case presented on appeal was sufficient to deprive the contested decision of its basis. More precisely, it looked at whether, on the basis of the new facts and evidence, the appellant's qualification could be deemed to have the scientific and/or technical proportion required by Rule 11(2) IPREE.

Interlocutory revision

7. While the Board appreciates that the way the Examination Secretariat dealt with the new facts in the present case was aimed at avoiding consecutive appeals, it nevertheless finds that it exceeded its powers under Article 24(3), first sentence, REE because, despite having formally decided not to rectify its decision of 9 February 2018, in its letter dated 25 May 2018 it included a revised calculation of the technical/scientific hours and also gave reasons as to why it considered the appeal not to be allowable. It thus decided de facto that the conditions laid down in Article 11(1) (a) REE and Rule 11(2) IPREE for registration for the European qualifying examination had not been fulfilled even if the appellant's submissions on appeal were taken into account. Moreover, in the letter dated 25 May 2018 the conclusions of the Examination Secretariat are summarised in point 6 under the title "DECISION". This could have suggested that the Examination Secretariat was thereby issuing a second written decision which superseded the contested first written decision dated 9 February 2018.
8. By way of exception to the devolutive effect of an appeal, Article 24(3), first sentence, REE empowers the Examination Secretariat to rectify a decision if it considers the appeal to be admissible and well-founded. It can thus take a decision to the effect that it grants rectification by setting aside the decision under appeal if the reasons for this decision no longer hold in light of the submissions on appeal. If, however, it considers the appeal to be either inadmissible or unfounded, it has to refer the case to the Board without giving reasons, since such reasons

would amount to a decision on the merits of the appeal. Therefore, given that the appellant had presented new facts and evidence which deprived the contested decision of its factual basis (as rightly acknowledged by the Examination Secretariat in point 3.2, 3.3, 4.2, 5.1 of its letter of 25 May 2018), the Examination Secretariat could have either set aside its decision dated 9 February 2018 and resumed the registration procedure with a view to taking a decision based on the newly presented facts (which would have given the appellant more time to produce additional evidence) or referred the case to the Board without further ado. In the Board's opinion, there is a lot to be said for the first option, as it can help to avoid procedural ping-pong between the bodies deciding at different instances, and in doing so help ensure procedural economy.

9. Nevertheless, the fact that the Examination Secretariat exceeded its powers under Article 24(3), first sentence, REE has no consequences for the present appeal proceedings, since the Board did not remit the case to the Examination Secretariat without any consideration as to substance, but dealt with the appeal as set out in point 6. above while ignoring the reasons given by the Examination Secretariat in its letter dated 25 May 2018.

Allowability of the appeal

10. In view of Article 24(1) REE and the well-established relevant case law (see point 3. above), the issue to be examined in the present case is whether the contested decision of the Examination Secretariat to refuse the appellant's request for registration on the basis of his Bachelor's degree in "Civil Engineering" infringed

the REE, any provision relating to its application or higher-ranking law.

11. In the present case, it is not the level of the appellant's degree that is in issue but the finding in the decision under appeal that the percentage amount of scientific and/or technical subject-matter in the courses taken was below the required 80% as defined in Rule 11(2) IPREE.

12. Article 11(1)(a) REE explicitly refers to the IPREE. Rule 11, in particular paragraphs (1) and (2), IPREE provides the applicable rules for determining whether a candidate has the necessary qualification for the purposes of Article 11(1)(a) REE. Rule 11(1) IPREE directly refers to Rule 13 IPREE, and requires the degree to be "*in one of the subjects defined in Rule 13 [IPREE], or any subjects equivalent to these ...*".

Article 11(1)(a) REE stipulates that candidates must be registered for the examination provided that they possess a university-level scientific or technical qualification, or an equivalent level of scientific or technical knowledge, as defined in the IPREE. According to Rule 11(1) IPREE, the required qualification must be a university-level scientific or technical Bachelor's degree or equivalent. Under Rule 11(2) IPREE this degree must have been awarded at the end of a full-time course with a minimum duration of three years. At least 80% of the course hours taken to obtain this degree must have been devoted to scientific and/or technical subjects.

The Board reaffirms the finding in decision D 9/14 (point 11 of the Reasons) that in case of any discrepancy between the calculation based on course

hours as compared to a calculation based on credits, the former is authoritative. However, it was also acknowledged in decision D 9/14 that many educational establishments issue certificates indicating only the credits awarded, but not necessarily the number of course hours. In such a situation, although the rules do not lay down that the 80% technical or scientific course hours pursuant to Rule 11(2) IPREE may also be calculated on the basis of credits, the Examination Secretariat may do so for its calculation if it is satisfied that the credits awarded are essentially proportional to the number of course hours taken. If the alternatives are to refuse a request for registration for lack of evidence of course hours taken or to calculate on the basis of credits whether the proportion of 80% technical or scientific course hours pursuant to Rule 11(2) IPREE has been reached, the latter should be given precedence.

13. Regarding the calculation of the proportion of scientific and/or technical subject-matter of the courses taken by candidates for studies completed on the basis of the European Credit Transfer and Accumulation System (ECTS), 60 credits are allocated for the workload associated with a full-time academic year, which ranges from 1 500 to 1 800 hours of work. This means that one credit corresponds to 25 to 30 hours of work. In the present case, however, the appellant completed his Bachelor's degree at Shanghai University, People's Republic of China. Therefore, for the conversion of credits into course hours (and vice versa), Rule 2 of the Regulation on Implementation of Credit System of Shanghai University dated August 2000 (hereinafter "Shanghai University Regulation"; see Appendix 1 and its English translation in Appendix 9),

which contains detailed calculation methods in respect of credits, has to be taken into account.

Under the ECTS, workload is an estimation of the time an individual typically needs to complete all the learning activities - such as lectures, seminars, projects, practical work, internships and individual study - required to achieve the defined learning outcomes in a formal learning environment. The credits awarded do not therefore strictly correlate with "course hours" within the meaning of Rule 11(2) IPREE and include instead time allocated for learning activities other than course units. Where this difference might have a bearing on the calculation of whether the requirement for 80% scientific/technical course hours in Rule 11(2) IPREE has been met, it is for the candidates seeking registration for the European qualifying examination to substantiate, together with their request for registration, that this is the case by providing suitable evidence from the academic institution concerned. The same principles must apply for studies completed on the basis of the Shanghai University Regulation.

14. The Board accepts in the present case that, on the basis of the evidence filed with the appellant's statement of grounds of appeal and his further letter dated 30 April 2018 (Appendices 1, 2, 3, and 11, and English translations thereof), the result of the calculation, in terms of credits, is 74.2% (225.5 out of 309 credits) and, in terms of course hours, 73% (2 425 out of 3 270 course hours).

15. The appellant essentially submitted that the scientific and/or technical proportion of his engineering degree would be at least 80% and thus the requirements of

Rules 11(2) and 13 IPREE met, if

(a) the Chinese Communist Party compulsory courses indicated in his letter dated 24 April 2019, for which 17 credits and 170 course hours were allocated, were not taken into account for the calculation of the scientific and/or technical proportion of the course hours;

(b) 10 credits and thus 100 course hours for the courses "Retrieval and Application of Document", "Engineering Invite and Submit Tenders & Budgetary Estimate (Approximate Estimate and Budget)" and "Construction Management (Organisation and Management of Construction)" were considered as scientific and/or technical;

(c) 90 course hours awarded for the course "College English" were deducted from the total number of course hours;

(d) the acknowledged 30 credits for the courses "Graduation Project/Design (Thesis)" and "Graduation Practice" were converted into 600 course hours relating to scientific and/or technical subjects.

16. In his letter dated 24 April 2019, the appellant argued for the first time that the courses "Principles of Marxism Philosophy", "Principles of Marxism Political Economy", "Introduction to Mao Zedong's Thoughts" and "Deng Xiaoping's Theory" were Chinese Communist Party compulsory courses (see point 15. (a) above) and that, in the Chinese higher education system, it was "politically compulsory" for every university student to attend these courses. Thus, compared with students in European higher education systems, Chinese students had to attend additional political courses, irrespective of the specific degree course. In view of this, it was unfair to Chinese students to take these

political courses into consideration for the calculation of the technical/scientific proportion of the course hours with respect to Rules 11(2) and 13 IPREE.

The Board cannot accept this argument. The appellant completed his Bachelor's degree at Shanghai University, People's Republic of China. Therefore, it is the Chinese educational framework which determines the (minimum) requirements for obtaining a Bachelor's degree in engineering. Such requirements may include, for instance, the number of courses as well as their content, nature, duration and extent. Furthermore, the appellant pointed out with respect to the courses "Graduation Project/Design (Thesis)" and "Graduation Practice" that a conversion of course weeks to course hours should be made within the framework of the education system of Shanghai University (see point VIII. (a) above). The same must be valid for the calculation of the technical/scientific proportion of the course hours with respect to Rules 11(2) and 13 IPREE. Even if, according to the Chinese higher education system, the appellant had to attend Chinese Communist Party courses on top of the degree courses to receive his Bachelor's degree, then the credits and respective course hours obtained for these compulsory courses cannot be ignored in the calculation of the technical content of his degree solely because these courses were unrelated to the specific degree course and not a necessary requirement for a Bachelor's degree in other education systems. A crucial factor for this calculation is that, within the framework of the education system of Shanghai University, these compulsory courses are indicated in the official Transcript of Academic Record from Shanghai University (Appendix 3). For this reason alone, the credits

obtained and the corresponding course hours have to be taken into account in the calculation for the purposes of establishing whether the appellant's degree fulfils the requirements of Rules 11(2) and 13 IPREE.

17. As regards the courses "Retrieval and Application of Document", "Engineering Invite and Submit Tenders & Budgetary Estimate (Approximate Estimate and Budget" and "Construction Management (Organisation and Management of Construction)" (see point 15. (b) above), the appellant accepted that they were held in interdisciplinary fields. However, he essentially argued that they should nevertheless be considered technical or scientific as defined in Rule 13 IPREE since they included subject-matter defined in said provision and were mainly aimed at solving technical problems in view of the principles developed in the European patent system for establishing the technical content of European patent applications or European patents.

18. The Board cannot accept the appellant's argument. Rather, it takes the view that, for a course to be taken into account for the purpose of calculating the technical content of a degree, the relevant course must be clearly scientific or technical within the meaning of Rule 13 IPREE. In other words, courses which are "*set in interdisciplinary fields*" cannot be taken into account, even if they include scientific/ technical subject-matter or "*mainly intend to solve technical problems*". It may be otherwise if the interdisciplinary course comprises individual course hours which are in fact devoted only to technical subjects, i.e. if individual course hours may be acknowledged as scientific or technical within the meaning of Rule 13 IPREE. In such cases, a percentage of the course hours

of the respective interdisciplinary course could be accepted as scientific or technical if it is demonstrated that individual course hours of the interdisciplinary courses in the appellant's degree were devoted exclusively to scientific and/or technical subjects. In addition, for reasons that are obvious, the Board does not concur with the appellant that the principles developed in the European patent system for establishing the technical content of European patent applications or European patents should apply to the question of whether a candidate possesses the required scientific or technical qualification.

19. According to the Bachelor's Degree Program of Department of Civil Engineering from Shanghai University (see Appendix 2 and its English translation in Appendix 10), the course "Retrieval and Application of Document" has the course No. 00924002. This course is described in the section "COURSE INTRODUCTION, 1. Brief Introduction of School Managed Basic Courses" of the Bachelor's and Associate's Degree Programs from Shanghai University (see Appendix 1 and its English translation in Appendix 9). According to the chapter "Contents", it is a course on *"developing scientific methods aiming at cultivating students' self-learning research ability for book, document and information retrievals"*. It enables students *"to make use of modern information tools and digital library for literature and information"*. It *"mainly introduces the fundamental knowledge, principles and skills of literature retrieval, and focuses on several major retrieval tools, disk databases, international online retrieval systems as well as the basic knowledge and operations skills of Internet"*.

It is clear from the above that this course focuses on research tools for scientific and technological information, including modern information tools such as computers, so that *"students can not only master the document retrieval theory but also acquire the practical skills of computer retrieval"*. Therefore, this course is not per se technical and/or scientific as defined in Rule 13 IPREE. In the absence of proof that individual course hours of this interdisciplinary course were devoted exclusively to scientific and/or technical subjects, the Board sees no possibility to accept at least a percentage of the course hours as scientific or technical.

20. According to the Bachelor's Degree Program of Department of Civil Engineering from Shanghai University, the courses "Engineering Invite and Submit Tenders & Budgetary Estimate (Approximate Estimate and Budget)" and "Construction Management (Organisation and Management of Construction)" have the course No. 18466043 and No. 18466038, respectively. The Bachelor's Degree Program of Department of Civil Engineering also contains short descriptions of these courses.

"Starting from the expenditure structure of architectural construction", the course Engineering Invite and Submit Tenders & Budgetary Estimate (Approximate Estimate and Budget) "introduces the determination of the construction estimation, the determination of the estimated construction drawing and the determination of final settlement of the whole construction process since preparation, respectively". In addition, *"this course mainly elaborates construction, division of construction projects, compositions of construction expenditure, valuation rules and processes, standards of quota and estimates,*

and calculation of construction cost". Further, while "focusing on the preparation of the construction drawing estimate, this course covers the preparation of decoration engineering and the principles, usage methods and application examples of software for estimation on computers as well".

The course Construction Management (Organisation and Management of Construction) mainly introduces *"fundamental principles of the construction organization and management" and "is aimed at discussing the problems like the principal contradiction between the crux of engineering construction and construction organization, making technical and economic comparisons, focusing on the analysis of factors influencing the schedule, quality and cost of construction and corresponding countermeasures, and illustrating the significance of advanced management science in enhancing the overall benefits of construction".*

In view of the above, neither of these courses is per se technical and/or scientific as defined in Rule 13 IPREE. In the absence of proof that individual course hours of these interdisciplinary courses were devoted exclusively to scientific and/or technical subjects, the Board sees no possibility to accept at least a percentage of the course hours as scientific or technical.

21. Consequently, the Board agrees with the Examination Secretariat that the fact that e.g. mathematics or IT knowledge is required to understand or apply the subject of the courses "Retrieval and Application of Document", "Engineering Invite and Submit Tenders & Budgetary Estimate (Approximate Estimate and Budget)"

and "Construction Management (Organisation and Management of Construction)" does not make them per se technical and/or scientific as defined in Rule 13 IPREE. Therefore, the 100 course hours for these interdisciplinary courses cannot be considered as technical and/or scientific in the calculation of the course hours for the appellant's degree.

22. In his notice of appeal, the appellant also submitted that 90 course hours awarded for two "College English" courses of the second and third terms of the second year should be deducted from the total number of course hours because he had been exempted from taking them in accordance with Rule 6, point 2, of the Shanghai University Regulation. By his further letter dated 11 July 2018, he filed as further evidence an Attestation from the Academic Affairs Office of Shanghai University, together with an English translation (Appendix S1).

23. The Board accepts the appellant's view that the 90 course hours awarded for the two "College English" courses (V) and (VI) have to be deducted from the total number of course hours (see point 15. (c) above). According to the principles explained in point 13 above, the 9 credits awarded for these courses do not have to strictly correlate with "course hours" within the meaning of Rule 11(2) IPREE. Rule 6, point 2, paragraph 1, of the Shanghai University Regulation provides that students who have successfully applied for an exemption from the course can obtain credits without taking the course. The Attestation from the Academic Affairs Office of Shanghai University confirms that the "College English" courses (V) and (VI) were exempted courses and correspond to 0 course hours. Consequently, no course hours for the "College English"

courses (V) and (VI) are considered in the calculation of the total number of course hours in the present case.

24. It follows from the above that the crucial point in the present case is whether the 30 credits acknowledged for the courses "Graduation Practice" and "Graduation Project/Design (Thesis)" can be converted into 600 course hours relating to scientific and/or technical subjects (see also point 15. (d) above). The appellant essentially argued that for the courses "Graduation Project/Design (Thesis)" and "Graduation Practice" 600 scientific and/or technical course hours should be acknowledged, regardless of their group or individual characteristics.

25. Regarding the course "Graduation Practice", the appellant essentially argued that this course was an individual activity of Practice Education the purpose of which was to "*practice knowledge mastered in the Degree Program and finish graduation project*" and belonged to "Off-campus Practice" under the supervision of Shanghai University, and that, therefore, the 4 credits awarded for this scientific/technical course should be converted into 80 course hours in accordance with Rule 2, point 3, paragraph 2, of the Shanghai University Regulation, regardless of its group or individual characteristics. As evidence, the appellant referred to the certificate of Graduation Practice dated 28 February 2018 and issued by a Shanghai company (Appendix 7, including the English translation), to the Regulation on Off-campus Practice Education of Shanghai University (Appendix 11), the Attestation issued by the Academic Affairs Office of Shanghai University (Appendix S1) and the Certificate issued by the Academic Affairs Office of Shanghai University

(Appendix S2). He further argued that his case substantially differed from those underlying decisions D 1/12 and D 2/12 since, as evidenced by the Regulation on Off-campus Practice Education of Shanghai University (Appendix 11), this practice in his Bachelor's degree in civil engineering was not an industrial internship but a scientific/technical course at Shanghai University.

26. The Board cannot accept the appellant's contention that the course "Graduation Practice" was not an industrial internship because it understands from the appellant's submissions and the certificate of Graduation Practice (Appendix 7) that the purpose of this course was to apply theoretical knowledge acquired during the Degree Program in practice. According to the established practice of the Examination Secretariat and as confirmed by decisions D 1/12 and D 2/12, such practical industrial internships are not taken into account for the calculation of the technical/scientific content of the course hours of a Bachelor's degree. It is true that the finding in these decisions relates to the ECTS but, as explained in point 13 above, the same principles apply, as a rule, to studies completed on the basis of the ECTS and to studies completed on the basis of the Shanghai University Regulation. In addition, the Board sees no reason why the appellant's submissions and the evidence on file would justify making an exception to the above established practice and relevant case law; in particular, there is no justification for an exception in the Regulation on Off-campus Practice Education of Shanghai University, which indeed confirms that the graduation practice course is "*an important step ... in linking theory with practice and developing students' practical ability ...*".

Therefore, the 4 credits for the course Graduation Practice cannot be converted into course hours.

27. From the beginning of the appeal proceedings, the appellant essentially argued that the course "Graduation Project/Design (Thesis)" was a group activity of Practice Education within the meaning of Rule 2, point 3, paragraph 2 of the Shanghai University Regulation and that the acknowledged 26 credits corresponded to 520 technical/scientific course hours.
28. With respect to Practice Education, such as graduation design and practice, the provisions of Rule 2, point 3, of the Shanghai University Regulation stipulate that activities of Practice Education "*shall be calculated according to the following methods:*
(1) For individual activities, every week accounts 2 credits;
(2) For group activities, every 20 course hours account 1 credit."
29. It is clear from the wording of Rule 2, point 3, of the Shanghai University Regulation that, regarding Practice Education, no course hours apply for individual activities but only for group activities.
30. As pointed out by the Board in its communication annexed to the summons, the course's title "Graduation Project/Design (**Thesis**)" (emphasis added by the Board) and the very high number of credits (26) awarded for this subject indicate rather that this course concerns the Bachelor's thesis which, in its very nature, is an individual activity of a Bachelor's student. Moreover, the appellant's submissions and evidence then on file were not sufficient to demonstrate that the course Graduation Project/Design (Thesis) was a group

activity. The 6 construction drawings of the Graduation Project of Civil Engineering Degree in Chinese then on file (Appendix 8 then on file) could have been made within the framework of both an individual activity and a group activity. The Attestation issued by the Academic Affairs Office of Shanghai University then on file (Appendix S1) merely confirms that the "*Courses of Graduation Project (Thesis) ... and Graduation Practice ... correspond to 30 credits and 600 course hours in total*". However, this attestation does not contain any explanations as to why the course Graduation Project/ Design (Thesis) could be considered as a group activity or an individual activity, and if the latter applied, on what basis the respective credits could be converted into course hours in view of the wording of Rule 2, point 3, of the Shanghai University Regulation. Thus, the attestation does not certify the claimed course hours in a plausible and comprehensible manner.

31. In reaction to the Board's communication, the appellant filed further submissions by letters of 13 April 2019 and 24 April 2019. The latter contained the Certificate issued by the Academic Affairs Office of Shanghai University (Appendix S2) as further evidence (the English translation thereof (S3) was filed by a further letter). The certificate reads with respect to the course at issue: "*Graduation Project (Thesis) (1846A002) ... is a group activities practice education course, and a group of students attended and studied in this course altogether and is taught and supervised by a professor.*"

The Board takes the view that this certificate is not sufficient proof since it contains no information on the course programme or content of the course in question.

32. At the oral proceedings before the Board, the appellant submitted a complete argument in the following terms:

The course Graduation Project/Design (Thesis), which was part of university courses stipulated in the degree programme, did not belong to "Off-campus Practice" but was conducted as a group activity on the university campus. Therefore it was not an individual exercise such as the completion of a "thesis paper". The content of this course referred to the project of "CIVIL AIR DEFENSE ENGINEERING OF UNDERGROUND GARAGE", which was a complex civil engineering project including construction technologies, mechanics, electronics, physics, chemistry, mathematics, and other scientific/technical subject-matter.

In support of these submissions, the appellant filed a complete version of Appendix 8 with a copy of the Graduation Project of Civil Engineering (Thesis) in Chinese, to which he had contributed.

33. Since this evidence is in Chinese, it does not enable the Board to establish the content of the Graduation Project. However, even if the 26 credits awarded were converted into 520 course hours, proof of the content of this course turned out to be crucial for the Board to be able to accede to the appellant's request for registration under Article 11(1) (a) REE and Rule 11(2) IPREE. Therefore, the Board did not take a final decision at the oral proceedings, but gave the appellant a further and final opportunity to file additional evidence.
34. After the oral proceedings, the appellant filed a copy of the Graduation Project Achievement Assessment,

compiled and documented by the Civil Engineering Department of Shanghai University during the graduation project assessment and examination in 2006 and an English translation thereof (Appendix S4), as well as a copy of the Certificate of the Graduation Project Course issued by the Civil Engineering Department of Shanghai University on 5 June 2019 and an English translation thereof (Appendix S5).

The Board is satisfied that these documents sufficiently demonstrate that the course Graduation Project/Design (Thesis) was conducted as a group activity and that therefore, pursuant to Rule 2, point 3, paragraph 2, of the Shanghai University Regulation, the acknowledged 26 credits can be converted into 520 course hours. The Board is also satisfied that these documents prove that the 520 course hours related entirely to eligible scientific and/or technical subjects within the meaning of Rule 13 IPREE.

35. It follows from points 23. and 34. above that 90 course hours have to be deducted from and 520 course hours have to be added to the total of 3 270 course hours for the candidate's degree and that 520 course hours have to be added to the 2 425 course hours which have been proven to relate to scientific and/or technical subjects within the meaning of Rule 13 IPREE. Consequently, the calculation of the percentage of scientific and/or technical subjects accounting for the course hours within the meaning of Rule 13 IPREE results in 79.56% (2 945 out of 3 700 course hours). This proportion of 79.56% is rounded up to 80% in accordance with the accepted rounding rules.

Conclusion

36. In follows from the above that the requirements for the appellant's registration under Article 11(1)(a) REE and Rule 11(2) IPREE were complied with as from 17 June 2019, because, on that date, the appellant finally submitted sufficient proof to render it credible for the Board that the 26 credits awarded for the course Graduation Project/Design (Thesis) can be converted into 520 course hours and that these 520 course hours related entirely to eligible scientific and/or technical subjects within the meaning of Rule 13 IPREE. The Board was therefore satisfied that the appellant's case presented on appeal was sufficient to deprive the contested decision of its basis.

Reimbursement of the appeal fee

37. In view of the fact that the case which the appellant presented on appeal was fresh but incomplete, and that he did not complete the case until after the oral proceedings, the Board did not consider it to be equitable in the circumstances of this case to order the reimbursement of the appeal fee (Article 24(4) REE).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examination Secretariat with the order to register the appellant under Article 11(1) (a) REE and Rule 11(2) IPREE as from 17 June 2019.

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated