



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 0001/19

D E C I S I O N
of the Disciplinary Board of Appeal
of 13 December 2022

Appellant: N.N.

Decision under appeal: Decision of the Disciplinary Committee of the
Institute of Professional Representatives before
the European Patent Office in case CD 02/2018
dated 13 December 2018.

Composition of the Board:

Chairman: W. Sekretaruk
Members: T. Karamanli
I. Beckedorf
P. H. Gendraud
D. Korper Zemva

Summary of Facts and Submissions

- I. This appeal is against the decision of the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office (epi) (the Disciplinary Committee) dated 13 December 2018 to refer the matter in case CD 02/2018, together with the relevant papers, to the Disciplinary Board of the EPO (the Disciplinary Board) in accordance with Article 6(2) of the Regulation on discipline for professional representatives (RDR, published most recently in the Supplementary publication 1, OJ EPO 2022, 142).
- II. On 14 March 2018, the epi Secretariat received a complaint against the appellant dated 13 March 2018 and addressed to the Disciplinary Committee.
- III. In accordance with Article 7(5) of the Additional Rules of Procedure of the Disciplinary Committee of the epi (RPDC, published most recently in the Supplementary publication 1, OJ EPO 2022, 153), the Chairman of the Disciplinary Committee appointed a Chamber pursuant to Article 2 RPDC and assigned the complaint (case CD 02/2018) to that Chamber.
- IV. By a communication under Article 6 RDR and Article 8 RPDC dated 18 June 2018 and sent by e-mail to the appellant, the Rapporteur of the Chamber of the Disciplinary Committee (the Chamber) forwarded the complaint and the supporting documentation to the appellant and invited him to provide a written defence within a two-month period. According to the file, the Chamber received no written response from the appellant.

V. By a letter dated 19 December 2018, the decision of the Disciplinary Committee dated 13 December 2018 to transfer the complaint to the Disciplinary Board in accordance with Article 6(2) RDR was notified to the appellant by registered letter in compliance with Article 21(1) RDR. In that letter, reference was also made to Articles 8 and 22(1) RDR.

VI. On 29 January 2019, the appellant filed notice of appeal against the decision of the Disciplinary Committee. His statement setting out the grounds of appeal was filed on 28 February 2019.

The appellant requested that the decision under appeal be set aside and that a warning or a reprimand be issued. He also requested a revision of the decision of the Disciplinary Committee in accordance with Article 23 RDR.

VII. By letters dated 4 November 2019, the President of the epi and the President of the EPO were given the opportunity to comment on the appeal pursuant to Article 12, second sentence, RDR.

VIII. By a letter dated 16 February 2020, the President of the epi submitted his comments. He supported the finding in decision D 1/18, Reasons, points 5 to 6.28, that an appeal against decisions of the Disciplinary Committee to transfer a complaint to the Disciplinary Board was inadmissible. He took the view that the Disciplinary Board of Appeal should confirm that such decisions were not a "final decision" within the meaning of Article 8(1) RDR and that it did not concur with the finding of decision D 2/18. He also commented on issues concerning the allowability of the appeal.

- IX. No comments were received from the President of the EPO.
- X. With a communication dated 16 December 2020, the Disciplinary Board of Appeal (the Board) set out its preliminary and non-binding opinion under Article 14 of the Additional Rules of Procedure of the Disciplinary Board of Appeal (RPDBA, published most recently in the Supplementary publication 1, OJ EPO 2022, 67).

The Board was inclined to reject the appeal as inadmissible because the Board did not regard a referral under Article 6(2)(c) RDR as a final decision within the meaning of Article 8(1) RDR. The Board therefore concurred with the finding in decision D 1/18 in that regard and did not follow the finding in decision D 2/18 of 5 April 2019. Therefore, it did not appear appropriate for the Board to address any of the substantive issues as this would prejudice an independent examination of the matter by the Disciplinary Board.

The Board, in accordance with Article 23(3) RDR, had examined the admissibility of the appellant's application for the revision of the decision of the Disciplinary Committee under Article 23 RDR and noted that Article 23(1) RDR referred to the revision of a final decision. Therefore, it appeared that the considerations with respect to the admissibility of the appeal also applied to the question of whether the decision of the Disciplinary Committee was a final decision within the meaning of Article 23(1) RDR. The Board took the preliminary view that this was not the case. Therefore, it tended to consider the appellant's application for revision under Article 23 RDR inadmissible.

The Board further invited the appellant to comment on the Board's preliminary opinion and to inform the Board within the two-month period whether, in view of the likely rejection of the appeal and of the application for revision as inadmissible, he wished to maintain or withdraw his appeal and/or his application for revision within two months from notification of the Board's communication.

XI. No reply was received.

Reasons for the Decision

Admissibility of the appeal

1. In the case at hand, the appellant appealed against the Disciplinary Committee's decision to refer the matter in the complaint case CD 02/2018, which had been filed against him, to the Disciplinary Board in accordance with Article 6(2)(c) RDR. Therefore, the question arises whether the current appeal is admissible.
2. Article 8(1) RDR reads: "*The Disciplinary Board of Appeal shall hear appeals against **final decisions**, including dismissals, of the Disciplinary Committee of the Institute and the Disciplinary Board of the European Patent Office.*" (emphasis added by the Board)
3. From this the Board concludes that only final decisions, including dismissals, of the Disciplinary Committee are appealable. The Board is of the opinion that only a decision of the Disciplinary Committee which effectively terminates first-instance disciplinary proceedings against a professional

representative can be considered a "final decision" within the meaning of Article 8(1) RDR (see also decision D 1/18, Reasons, point 6). This position is also supported by the legislative preparatory materials as analysed in decision D 1/18, Reasons, points 6.4 to 6.7.

4. Pursuant to Article 6(2) RDR, the Disciplinary Committee decides, where appropriate after conducting an investigation, to (a) dismiss the matter, (b) issue a warning or reprimand, or (c) refer the matter, together with the relevant papers, to the Disciplinary Board. Thus, the Disciplinary Committee has various options for decision in accordance with the exhaustive list of Article 6(2) RDR.
5. The Board takes the view that not all decisions of the Disciplinary Committee under Article 6(2)(a) to (c) RDR are final decisions within the meaning of Article 8(1) RDR and thus agrees with the finding of the Disciplinary Board of Appeal in a different composition in case D 1/18 (see decision D 1/18, Reasons, section 6) and not with the finding of the Disciplinary Board of Appeal in another different composition in case D 2/18.
6. The Disciplinary Committee's decisions to dismiss a matter under Article 6(2)(a) RDR or to impose one of the penalties mentioned in Article 6(2)(b) RDR (a warning or reprimand) can be considered substantive decisions which effectively terminate the disciplinary proceedings against the professional representative pending before the Disciplinary Committee. This view is in line with the findings in decision D 1/18 (Reasons, points 6.23 to 6.24) and decision D 2/18 (Reasons, point 1).

7. However, the Board considers that the situation is different when the Disciplinary Committee decides to refer the matter, together with the relevant papers, to the Disciplinary Board in accordance with Article 6(2)(c) RDR. Such a decision does not result in a final decision within the meaning of Article 8(1) RDR. Rather, it is merely a procedural decision, namely that the first-instance disciplinary proceedings are closed before the Disciplinary Committee and become pending and continue before the Disciplinary Board which is another first-instance disciplinary body and not an appellate disciplinary body like the Disciplinary Board of Appeal (see also D 1/18, Reasons, points 6.3 and 6.27). After a referral only the decision of the Disciplinary Board terminates the first-instance disciplinary proceedings completely, i.e. from the point of view of a substantive outcome (see also D 1/18, Reasons, point 6.9). Hence, a referral under Article 6(2)(c) RDR from the Disciplinary Committee to the Disciplinary Board cannot be considered a decision which effectively terminates the first-instance disciplinary proceedings.
8. For the full arguments and reasoning for the present decision that a referral under Article 6(2)(c) RDR does not constitute a final decision within the meaning of Article 8(1) RDR, the Board refers to the detailed reasoning in decision D 1/18 (see in particular Reasons, points 6.2 to 6.27), which it endorses.
9. In view of the above, the Board does not consider a referral under Article 6(2)(c) RDR to be a final decision within the meaning of Article 8(1) RDR and consequently does not find such a referral to be

appealable. Therefore, the Board concludes that the appeal in the case at hand is inadmissible.

Admissibility of the appellant's application for the revision of the decision of the Disciplinary Committee under Article 23 RDR

10. The Board, in accordance with Article 23(3) RDR, has to decide on the admissibility of the appellant's application for the revision of the decision of the Disciplinary Committee under Article 23 RDR. The Board notes that Article 23(1) RDR refers to the revision of a "**final decision**". Therefore, the above considerations also apply to the question of whether the decision of the Disciplinary Committee is a final decision within the meaning of Article 23(1) RDR. The Board takes the view that this is not the case here. Therefore, the appellant's application for revision under Article 23 RDR is inadmissible.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.
2. The application for the revision of the decision of the Disciplinary Committee under Article 23 RDR is rejected as inadmissible.

The Registrar:

The Chairman:



N. Michaleczek

W. Sekretaruk

Decision electronically authenticated