



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 0002/19

D E C I S I O N
of the Disciplinary Board of Appeal
of 30 March 2020

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat dated 7 February 2019 refusing the registration to the European Qualifying Examination and establishing that the requirements of Article 11(1)(1) REE and Rule 11(2) IPREE have not been fulfilled

Composition of the Board:

Chairman: L. Bühler
Members: T. Bokor
A. Hooiveld

Summary of Facts and Submissions

- I. This is an appeal against the decision of the Examination Secretariat ('Secretariat') dated 7 February 2019 according to which the appellant's request for registration for the European Qualifying Examination ('EQE') was refused.
- II. In the request for registration the appellant candidate filed a copy of his "Bachelor of Science in Industrial Engineering" degree, issued by the Purdue University in the State of Indiana, United States of America, and an Academic Transcript corresponding to his degree, including a list of the courses followed and the corresponding credits. He further submitted evidence of a training period as required pursuant to Article 11(2) (a) (i) REE, starting from 15 October 2018 and foreseen to continue until 15 October 2022.
- III. In the decision under appeal the Secretariat held that the academic qualification of the appellant did not fulfil the requirements of Rule 11(2) IPREE in combination with Rule 13 IPREE, as less than 80% of the subjects studied could be considered as scientific or technical. As a result, the conditions for registration were not met and thus his registration was refused.
- IV. On 6 March 2019 the candidate appealed against the decision. The appeal fee was paid on 7 March 2019. In the statement setting out the grounds of appeal he submitted that with a proper method of calculation, his degree should be recognised as fulfilling the requirements of Rule 11(2) IPREE. In particular, credits awarded for non-compulsory courses and credits awarded for transfer or exemption credits, not

involving any "University activity" should not be taken into account. The appellant candidate was awarded a total of 136 credits, of which 95 was recognised by the Secretariat as technical. The degree in question required 123-125 credits. Although transfer or exemption credits may count towards the fulfilment of the required degree, these did not involve activity at the university and resulted in zero course hours, and therefore should not flow into the calculation of the percentage. The candidate received 11 credits for non-compulsory courses and a further total of 13 transfer and exemption credits, both in technical subjects (4 credits) and in non-technical subjects (9 credits). These should be subtracted from the total credits. As a result, the properly calculated percentage would be $(95-4)/(136-(11+13)) \approx 81\%$, i.e. it would surpass the prescribed 80%. Even if this method of calculation would not be accepted by the Secretariat or the Disciplinary Board of Appeal, the registration should be allowed on the basis of equitable considerations. Such equitable considerations would be the internationally recognised reputation of the University, the acceptance of the candidate's degree by the United States Patent and Trademark Office, and the candidate's experience as a patent practitioner in the United States.

- V. The Secretariat asked the appellant to provide further evidence and clarification with respect to the facts stated in the grounds of appeal. These were submitted by the appellant in a letter dated 5 April 2019. The submitted materials explained which courses were required for the appellant's degree, and which were merely voluntary, and further explained how the required total credits could be achieved by various course combinations. The appellant also provided

evidence that zero hours were associated with transfer and exemption credits, but generally credits were proportional to course hours. A degree in law by the appellant was also submitted, and a supporting statement by a principal scientist working at the employer of the appellant, concerning the technical experience of the appellant. The appellant again requested to take the totality of facts into consideration in recognising his degree as fulfilling the requirements of Rule 11(2) IPREE.

VI. The Secretariat informed the appellant in a letter dated 18 April 2019 that it did not allow the appeal. The reasons for the decision were that the Secretariat established that the degree in question required 123 credits. The Secretariat was minded to reduce the 136 credits with the 11 credits of the voluntary courses, but even with this calculation (95/125 or 95/123) only 76% or 77% could be recognised. The deduction of the transfer/exemption credits would not be consistent with the fact that either course hours or credits should be taken as the basis of the calculation, but they could not be mixed at will. The Secretariat had no power to take into account the remaining arguments (recognition by the USPTO, the law degree of the appellant and the supporting statement). Apart from Rule 14 IPREE, the REE and IPREE did not foresee the possibility of evaluating the professional experience as argued by the appellant, even if the professional experience in itself was apparently valuable. Therefore the Secretariat transmitted the appeal to the Disciplinary Board of Appeal ('Board') with letter dated 18 April 2019.

VII. In a Communication under Article 14 of the Additional Rules of Procedure of the Disciplinary Board of Appeal

(RPDBA, Supplementary publication 1, OJ EPO 2020, 68) dated 29 November 2019 the Board informed the appellant of its provisional view that the finding of the Secretariat and its assessment of the applicable provisions appeared to be correct, for reasons essentially corresponding to the reasons discussed below in this decision. The appellant was given an opportunity to comment within a time limit of two months. The Board did not receive any further submissions from the appellant.

- VIII. Both the President of the European Patent Office (EPO) and the President of the Council of the Institute of Professional Representatives (epi) were informed about the appeal proceedings and given the opportunity to comment pursuant to Article 12, second sentence, of the Regulation on discipline for professional representatives (RDR, Supplementary publication 1, OJ EPO 2020, 135). No comments were received by the Board.
- IX. The appellant requested that the decision under appeal be set aside, and his request for registration to the EQE be granted. This request was directed at the Examination Secretariat and also at the Disciplinary Board of Appeal. Reimbursement of the appeal fee was also requested, the latter without reasons.

Reasons for the Decision

Unless indicated otherwise, REE refers to the version in force from 1 January 2009, and IPREE refers to the version in force from 1. April 2010 (last published in the Supplementary Publication 2 - OJ EPO 2019, pages 2 and 18).

1. The appeal is admissible.

2. Article 24(1) REE provides that an appeal shall lie from decisions of the Examination Board and the 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 request for registration for the EQE pursuant to Rule 11(1) and (2) IPREE infringed the REE, any provision relating to its application or higher ranking law.
3. Article 9(2) (b) and (c) REE stipulates that the Secretariat shall prepare and organise the examinations and decide on the registration and enrolment of candidates in accordance with the REE and IPREE. Article 10(2) REE stipulates that in performing its duties relating to registration and enrolment, the Secretariat shall not be bound by any instructions and shall only comply with the provisions of the REE and the IPREE.
4. The conditions for registration and enrolment are specified in Article 11 REE. Article 11(1) (a) REE stipulates that candidates shall be registered for examination provided that they possess a university-level scientific or technical qualification, or are able to satisfy the Secretariat that they possess an equivalent level of scientific or technical knowledge, as defined in the IPREE. The relevant implementing provisions to this article are Rules 11-15 IPREE. Rule 11(1) IPREE requires that the degree must have at

least the level of a technical bachelor (or equivalent), and further it must be in a subject as defined by Rule 13 IPREE. The fulfilment of these requirements was apparently not disputed by the Secretariat in the present case. The contentious issue is solely the requirement of the 80% technical/scientific course hours, as defined by Rule 11(2) IPREE.

80% technical/scientific course hours, Rule 11(2) IPREE.

5. As a preliminary and general observation, the Board holds that the Secretariat has little room to take factors into consideration which were not explicitly addressed by the REE and IPREE, when examining a degree of a candidate. Article 11(1)(a) REE explicitly refers to the IPREE. Rule 11, in particular paragraphs (1) and (2) IPREE provide the applicable rules for determining whether the necessary qualification for the purposes of Article 11(1)(a) REE is given for any candidate. Rule 11(3) IPREE clearly identifies Rule 14 IPREE as the (only) applicable provision when the formal educational requirements foreseen in Rule 11(1) and 11(2) IPREE are not fulfilled. The Board sees no possibility to ignore the (arguably strict) requirements of Rules 11 to 13 IPREE, other than the exception foreseen by Rule 14 IPREE (see also D9/13 of 21 May 2014, point 9 of the Reasons). On this basis, the Secretariat (and the Board) is bound to interpret these provisions of the REE and IPREE in accordance with their clear literal meaning as long as this does not lead to a result which is manifestly absurd or unreasonable.
6. The Examination Secretariat found that the academic qualification of the appellant did not fulfil the requirements of Rule 11(2) IPREE, in that the course

leading to his degree was not based on a sufficient proportion (80%) of scientific and/or technical subjects (as used hereinafter briefly: technical), and his request for registration for the European qualifying examination pursuant to Rule 11(1) and (2) IPREE was refused. The calculation was based on credits, instead of course hours. The appellant does not dispute which courses can be considered technical. The Secretariat recognised 95 credits as being based on technical subjects. It appears that this count *per se* is also not disputed by the appellant, albeit some of its own calculations are using a smaller figure (95-4=91, as mentioned above in IV.). However, this difference is not due to the different assessment of the technical content of certain courses, but to the method of calculation. The core objection of the appellant is directed against this, in that the appellant and the Examination Secretariat disagree how the basis for the calculation (i.e. the 100%) should be determined. The appellant submits that certain courses and the corresponding credits should be excluded from the calculation, and thereby the proportion of the remaining technical courses will achieve the required 80%.

7. Rule 11(2) IPREE stipulates that the percentage in question is to be calculated on the basis of course hours. The appellant did submit documents which in theory would have allowed a conversion between credits and course hours; however, he did not argue that changing the basis of the calculation from credits to course hours would decisively change the result. This is also consistent with the evidence submitted by the appellant, which merely proves that credits and course hours were essentially proportional at the university (see V. above). Thus the Board holds that in the

present case credits are a suitable basis of the calculations for the purposes of Rule 11(2) IPREE, taking into account the standard practice of higher educational institutions to issue only credit summaries in their academic transcripts, but no course hour summaries. This is also recognised by the case law of the Disciplinary Board of Appeal (D 9/14, point 11 of the Reasons, cited in CLBA 9th Edition 2019, Chapter V.C.2.1.1).

8. The Board holds that those transfer credits that were accepted by Purdue University and included in the total credit record of the appellant are to be recognised as credits which must flow into the calculation. The fact that zero course hours were allocated to these courses does not change this assessment. The Board considers that this is a mere administrative technicality by the university: obviously, students attending the equivalent courses at the university would have had their course hours counted, and there seems to be no reason to discriminate (or possibly to favour) a candidate merely because the given course was in fact attended somewhere else, but otherwise recognised by the university awarding the degree in question as equivalent to its own courses. The decisive issue is whether the course (i.e. the corresponding credits for the course) was required to obtain the degree in question, as explained in more detail below.
9. Pursuant to Rule 11(2) IPREE, the 80% is to be calculated on the basis of the course hours "**taken to obtain** this degree". The Board reads this requirement as the course hours **required** for being awarded the degree in question (see also D 9/14, Reasons 12, cited in CLBA 9th Edition 2019, Chapter V.C.2.1.1).

10. The Board holds that a course is required in the above sense if, in view of the totality of the courses taken by a candidate, the degree in question could not have been awarded if the course in question had not been taken. In this manner, a course may be required either because the course itself was indispensable (irrespective of the number of credits, e.g. for an obligatory course) or because the credits for the course were indispensable for the candidate for achieving some prescribed number of credits. This means, on one hand, that e.g. non-technical voluntary courses need not be taken into account for the calculation, but on the other hand it also means that voluntary technical courses also cannot be taken into account. A non-technical course can only be disregarded if the candidate can prove that the course was in fact not necessary at all for obtaining the degree in the end, in view of the totality of courses actually taken.
11. With respect to the appellant's degree, the Board accepts, just like the Secretariat, that 11 credits awarded for voluntary non-technical courses can be disregarded, so that the basis of the calculations is not higher than $136-11=125$ credits. The Board is even prepared to accept the lower figure of 123 credits. It seems undisputed by the appellant and the Secretariat that the degree of the appellant required at least 123 credits. This figure appears in the evidence submitted by the appellant (Appendix II, remark in top right corner). Thus the Board has no reason to dispute this.
12. However, the Board holds that the courses involving the transfer/exemption credits discussed above in point 9 cannot be disregarded. These transfer/exemption credits were in fact necessary for the appellant to achieve a

total of 123 credits, and in this manner these credits were required for obtaining his degree.

13. On this basis, the appellant must demonstrate that he had obtained $123 \times (\geq) 0,8 = (\geq) 98,4$, i.e. strictly seen at least 99 credits from technical courses, while fulfilling the general course requirements also in respect of the various course types (Appendix II). As indicated in its preliminary opinion, the Board would also accept 98 technical credits as sufficient, as this figure would correspond to $0,7967 \approx 80\%$, rounding up.
14. On the basis of the submitted evidence, the Board is unable to establish on its own that a total of 98 credits for technical courses have been awarded to the appellant. This finding of the Board is primarily based on the appellant's credit summary as submitted with the request for registration dated 10 January 2019 (Academic transcript from the record of the appellant, issued by Purdue University, dated 5 December 2011). The Board has no reason to question the finding of the Secretariat, according to which the transcript attests 95 technical credits, since this assessment has not been disputed by the appellant. The appellant himself did not submit any further arguments after receipt of the Board's preliminary opinion pointing out the apparently required total of 98 technical credits.
15. The additional circumstances as argued by the appellant in his letter dated 5 April 2019 (titled as Statement Supporting Supplemental Evidence, see V. above) cannot be taken into account. However small the difference between the demonstrated 95 and the required 98 technical credits may appear, the circumstances invoked by the appellant, i.e. a legal degree in IP, effective technical and patent-related work at his company,

cannot compensate the insufficient proportion of the technical subjects as required by Rule 11(2) IPREE (except as provided by Rule 14 IPREE, but this was not raised in the present appeal). The same applies to the facts submitted in support of the "equitable considerations" (see the last part of point IV above). Neither the Secretariat, nor the Board is given powers not to apply the provisions of Rule 11(2) IPREE for reasons of equity (D 09/13, Reasons 10).

16. For these reasons, the degree of the appellant does not fulfil the requirements of Rule 11(2) IPREE, and cannot be recognised as a university-level scientific or technical qualification for the purposes of Article 11(1)(a), first phrase, REE.
17. On the basis of the above, the Board finds that the decision of the Secretariat did not infringe the applicable provisions of REE or IPREE, nor of any higher ranking law. Therefore, the appeal must be dismissed on its merits.
18. The appellant also requested the reimbursement of the appeal fee, but gave no particular reasons for the reimbursement. The Board takes it that this request was aimed at the reimbursement foreseen by Article 24(4), second sentence, REE when the appeal is allowed. Given that this is not the case, there is no room for the reimbursement of the appeal fee.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



N. Michaleczek

L. Bühler

Decision electronically authenticated