

BESCHWERDEKAMMERN  
DES EUROPÄISCHEN  
PATENTAMTS

BOARDS OF APPEAL OF  
THE EUROPEAN PATENT  
OFFICE

CHAMBRES DE RECOURS  
DE L'OFFICE EUROPEEN  
DES BREVETS

Case Number: D 0002/92

D E C I S I O N  
of the Disciplinary Board of Appeal  
of 23 September 1993

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the European  
Qualifying Examination dated 11 October 1991.

Composition of the Board:

Chairman: C. Payraudeau

Members: L.C. Mancini

J.-C. Saisset

Ch. Bertschinger

A. Armengaud

## Summary of Facts and Submissions

I. The Appellant sat for the European Qualifying Examination for Professional Representatives held before the European Patent Office in April 1991.

II. By registered letter of 11 October 1991 the Chairman of the Examination Board for the European Qualifying Examination, hereinafter referred to as the "Board", notified the Appellant of his performance in the four papers; the grades obtained by the Appellant were the following:

Paper A: 5 (inadequate)

Paper B: 4 (pass)

Paper C: 5 (inadequate)

Paper D: 2 (very good).

The Appellant was informed of his not having been successful in the European Qualifying Examination as well as of the possibility to resit the papers he had failed on one of the next two qualifying examinations.

III. By letter dated 11 December 1991, the Appellant filed an appeal requesting that the above-mentioned decision be revoked and that a decision that he had passed the examination be given. Auxiliarily, the Appellant requested oral proceedings.

In his Statement of Grounds dated 8 January 1992, the Appellant essentially submitted the following argumentation:

The decision in the present case infringed the "Regulation on the European Qualifying Examination for professional representatives before the European Patent Office" (hereafter, the REE) and the provisions relating to its application.

In particular, point I (criterion of fitness to practice) and point VII (rules to be applied under Article 12(2)(b) REE to decide whether a candidate has passed or not) of the "Implementing provisions under Article 12 REE" (OJ EPO 1991, 88-89) had been violated.

According to the Appellant, the Examiners had incorrectly awarded both his papers A and C an insufficient number of points. A "substantiated" evaluation of the answers given in these papers should have led to his being awarded better grades thus making him successful in his examination.

IV. The "Board", in considering the appeal in accordance with Article 23(3) REE, decided not to rectify its decision and forwarded the case to the Disciplinary Board of Appeal.

V. The President of the Council of the Institute of Professional Representatives before the EPO (EPI) and the President of the EPO were consulted under Article 12 of the Regulation on Discipline for Professional Representatives in conjunction with Article 23(4) REE and did not present any comment on said appeal.

VI. In accordance with the Appellant's request, oral proceedings for the consideration of this appeal were held on 23 September 1993. The President of the EPI, duly summoned, was not represented. The President of the EPO was represented by a member of his staff.

## Reasons for the Decision

1. The appeal complies with the provisions of Article 23(2) REE and is admissible.
2. The appealed decision is based on Article 12 REE and on points VII and VIII of the implementing provisions under Article 12 REE.

Point VIII states that a candidate is unsuccessful if he has failed one or two papers and does not qualify under point VII.

According to point VII(c), which is the applicable provision, the candidate is successful if he has failed two papers, each of which has been awarded a grade 5, those grades being in only one of A and B and only one of C and D, and offset by a grade 3 or better in **both** of the remaining two papers (emphasis added).

In the present case, the Appellant failed papers A and C. The first condition of point VII(c) was fulfilled. However, although the grade 5 obtained in paper C was offset by the grade 2 awarded in paper D, the grade 5 obtained in paper A was not offset by the grade 4 awarded in paper B. The decision under appeal has therefore correctly applied the implementing provisions of the REE.

4. The Appellant has in fact not submitted that the "Board" had infringed these provisions but has only alleged that the papers A and C had been awarded an insufficient number of points and that he should therefore have been awarded better grades in both papers.

According to the constant jurisprudence of the Disciplinary Board of Appeal, such a "value" judgment expressed by the "Board", being specific to examination, cannot be subject to judicial review. The grounds given by the Appellant cannot

.../...

therefore support a revocation of the decision under appeal.

**Order**

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

The appeal is dismissed.

The Registrar: The President:

M. Beer

C. Payraudeau