

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Case Number: D 0004/93

D E C I S I O N
of the Disciplinary Board of Appeal
of 18 April 1994

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the European
Qualifying Examination dated 9 October 1992.

Composition of the Board:

Chairman: J.-C. Saisset

Members: L. Mancini

J. Stephens-Ofner

A. Armengaud

Ch. Onn

Summary of Facts and Submissions

I. The Appellant sat for the European Qualifying Examination for Professional Representatives held before the European Patent Office from 8 to 10 April 1992.

II. By registered letter of 9 October 1992 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: 6 (very inadequate)
Paper D: 5 (inadequate).

The Appellant was informed of his not having been successful in the European Qualifying Examination as well as of the possibility to apply for enrolment for a future European Qualifying Examination.

III. By letter dated 2 December 1992, the Appellant filed an appeal requesting that the above-mentioned decision be set aside and that a decision that he had passed the examination be entered. Auxiliarily, the Appellant requested to be supplied with grounds or evidence upon which the appealed decision was based and also to be granted oral proceedings.

In his Statement of Grounds dated 6 January 1993, the Appellant essentially contended that in all his papers, too many scoring points were taken out without justification and that the scores awarded were far too low.

According to the Appellant, since the Examiners had awarded to his papers an insufficient number of points without justification, a careful evaluation of the answers given

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in the papers should, on the contrary, have led to the Appellant being awarded better grades thus making him successful in his examination.

IV.The "Board", after 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.The Appellant withdrew his request for oral proceedings on 30 September 1993.

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 point VIII of the implementing provisions under Article 12 REE.

3.In the present case, in which the Appellant failed papers A, C and D, the decision under appeal has clearly and correctly applied said implementing provisions of the REE.

4.As a matter of fact, the Appellant has not submitted that the "Board" had infringed these provisions but has simply alleged, without substantiation, that the papers A, B and C had been awarded an insufficient number of points and that he should therefore have been awarded better grades in all his papers. According to the constant jurisprudence

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of the Disciplinary Board of Appeal, "value" judgments expressed by the Board, as in the instant case, being specific to examination, in principle, cannot be subject to judicial review. The purely subjective and unproven allegations and clear complaints by the Appellant cannot therefore be considered as objective grounds legally apt to support a revocation of the decision under appeal.

In its decision D 6/92, OJ EPO 1993, 361, the Disciplinary Board of Appeal made clear that the award of points and scores, as an expression of examination evaluation, is the prerogative of the "Board". This "Board" prerogative can be legally challenged only in the presence of serious and obvious mistakes by that "Board". Furthermore, said mistakes must be relevant to the appealed decision and fundamental, in the sense that they must be apt to be verified by application of legal principles. In the present appeal, said "Board" mistakes have not occurred and, therefore, there is no legal basis to declare the candidate as being successful.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar: The President:

M. Beer J.-C. Saisset