



Case Number: D 0007/98

D E C I S I O N
of the Disciplinary Board of Appeal
of 7 August 2001

Appellant: n.n.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
24 September 1997.

Composition of the Board:

Chairman: B. Schachenmann
Members: C. Holtz
V. Di Cerbo
A. Armengaud
Ch. Onn

Summary of Facts and Submissions

I. The appellant sat the European Qualifying Examination in 1997, receiving the following grades:

Paper A: 5 - fail, paper B: 5 - fail, paper C: 4 - pass and paper D: 4 - pass.

II. In a communication dated 1 October 1997, the appellant was informed of the decision of the Examination Board of 24 September 1997 that he had not been successful in the examination. He was also informed that the decision had been taken in accordance with the Implementing Provisions (IP) to the Regulation on the European qualifying examination (REE) published in OJ EPO 1994, 595 ff.

III. On 8 December 1997, the appellant lodged an appeal against the decision. The appeal fee was paid on 10 December 1997, and the grounds of appeal were submitted on Monday 12 January 1998.

IV. The appellant requests that he be awarded a grade 4 or higher for one or both of papers A and B. In the event that the decision is not amended as requested for paper B, the appellant requests that the Examination Board provide a more detailed analysis of the marking of paper B, particularly indicating where marks were awarded for argumentation.

V. The appellant's submissions in support of his requests may be summarised as follows:

The Implementing Provisions under Article 12 REE (OJ 1994, 595) were infringed in the marking of his paper B, for which he received the overall grade 5 - fail. The examiners of paper B gave him 16 and 15 marks

respectively for his proposed amendments of claims, whereas they only awarded him 4 and 5 marks respectively for his argumentation, a disparity which he finds extremely difficult to understand. Based upon this observation, the appellant also discusses his answers to paper B in some detail, concluding that his arguments were appropriate and therefore in combination with his marks for the amended claims indicate that he is fit to practise as a professional representative before the EPO. - The appellant has not submitted any arguments with regard to his paper A, which was also awarded a grade 5.

VI. The Disciplinary Board of Appeal has issued a communication in which the Board concluded that the appeal did not seem allowable. The appellant did not comment on the Board's findings but requested a decision to be taken.

Reasons for the Decision

1. The appeal is admissible.
2. The appeal is based on the assumption that the examiners marking paper B did not take due account of the appellant's answers related to argumentation, which had received far lower marks by both examiners than his responses regarding the amendment of claims. The appellant also discusses whether the format of his arguments should have been different, but contends that his argumentation in support of the amendments proposed by him - which were supposedly good - was appropriate.
3. Pursuant to Article 27(1) REE, the Disciplinary Board of Appeal is not empowered to change awarded marks or grades, unless errors have been made that are so

obvious that they can be established without reopening the marking procedure. This requires that the errors are similar to errors that can be corrected under Rule 89 EPC, eg calculation errors (see D 1/92, OJ 1993, 357, and D 23/97 of 16 March 1998).

4. In the present case, however, the request of the appellant amounts to a reopening of the marking procedure. The appellant does not claim that any corrigible errors in the sense of decisions D 1/92 or D 23/97 were made. Instead, the appeal is rather directed to the evaluation made by the examiners, which the appellant feels should have resulted in marks corresponding to the marks awarded for his proposed amendments.

However, the object of paper B is to establish the candidate's aptitude in each area. It does not automatically follow that an appropriate amendment is supported by an appropriate argument. Thus, the alleged disparity of the marks in the categories "Claims" and "Argumentation" of paper B is no evidence that, in marking the appellant's paper, the examiners have made a mistake. Furthermore, the two examiners independently came to about the same distribution of points in paper B.

5. For the above reasons, the request that the papers A and B be awarded a higher grade cannot be allowed. The auxiliary request for a more detailed analysis by the Examination Board cannot be entertained for the reason that it is not directed to the Disciplinary Board of Appeal.

Order

For these reasons it is decided that:

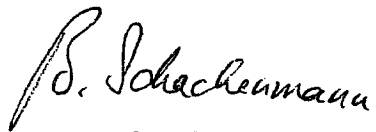
The appeal is dismissed.

The Registrar:



M. Beer

The Chairman:



B. Schachenmann