The Administrative Tribunal,

Considering the fourth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 3 February 2006, the EPO's reply of 18 May, the complainant's rejoinder of 6 June and the Organisation's surrejoinder of 7 July 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Italian national born in 1948, entered into the service of the European Patent Office – the EPO's secretariat – on 7 January 1980.

On 27 March 2003 an official in the Personnel Department pointed out to the complainant that he had taken more than 307 days of sick leave during the previous three-year period and asked him to appoint a medical practitioner to represent him on an Invalidity Committee that would be convened. On 23 April the complainant provided the EPO with the name of the medical practitioner he wished to represent him. On 20 June that medical practitioner informed the Office's medical adviser that it was the complainant's opinion that his health problems were "linked to the situation at his workplace" and that he wished to be transferred.

On 11 November 2003 an official in the Personnel Department drew the complainant's attention to the fact that he had taken 335.5 days of sick leave since 12 November 2000. Consequently, he was approaching the maximum entitlement to paid sick leave under Article 62(6) of the Service Regulations for Permanent Employees of the European Patent Office and an Invalidity Committee would need to be convened to address the issue of extended sick leave. He was asked to appoint a medical practitioner to represent him and he was given the name of the practitioner appointed by the President of the Office. On 24 November 2003 the complainant provided the Office with the name of the medical practitioner he was appointing to the Committee. A third practitioner was then appointed by mutual agreement between the first two. On 2 September 2004 the Medical Committee (as the Invalidity Committee was renamed from 1 January 2004) met and unanimously concluded that the complainant's illness was serious. It decided to extend his sick leave until 1 September 2005. The complainant was not on sick leave at the time that decision was taken so he was asked to undergo a medical examination by the Office's medical adviser on 13 September 2004. The latter determined that the state of the complainant's health was such as to warrant placing him on compulsory sick leave as provided for under Article 62(5) of the Service Regulations. The complainant was informed of this decision the following day in a letter from the Director of Personnel. During a follow-up examination by the Office's medical adviser on 2 March 2005 the complainant expressed the wish to have his sick leave extended upon its expiration in September 2005.

The Medical Committee met again on 10 November 2005 and unanimously concluded that the complainant was permanently unable to perform his duties but that his invalidity was not the result of an occupational disease within the meaning of Article 14(2) of the Pension Scheme Regulations. On 23 November 2005 the President of the Office decided that the complainant should "cease to perform his duties with effect from 1 December 2005" and that he would therewith receive an invalidity pension pursuant to Article 14(1) of the Pension Scheme Regulations. That is the impugned decision.

B. The complainant submits that the President's decision of 23 November 2005 was unwarranted. While he admits that his health condition was "precarious", he argues that his physician indicated that he was improving and had implied that recovery was possible. He disagrees that he is "definitively and permanently" unable to carry out his duties and finds the Medical Committee's conclusion to be manifestly erroneous. Furthermore, he argues that that Committee had no mandate to decide on his invalidity because he had not yet exhausted what he terms the maximum allowable "*bona fide*" sick leave set out in Article 62(2) of the Service Regulations; therefore convening

the Medical Committee and allowing it to take a decision on his invalidity was a procedural error rendering the decision *ultra vires*.

Subsidiarily, in the event that the Tribunal holds that the Committee's finding of invalidity is correct, he contends that his pension should have been awarded under Article 14(2) of the Pension Scheme Regulations rather than Article 14(1), which concerns "regular" invalidity pensions. Indeed, if he suffers from invalidity to the extent that he can no longer work then it must also be found that the invalidity was related to his working conditions. The Medical Committee either made a manifestly erroneous conclusion or it overlooked essential facts by concluding that his invalidity was not due to an occupational disease. He points out that neither the Service Regulations nor the Pension Scheme Regulations define the term "occupational disease". In his opinion, an occupational disease "is present when there is a causal link between the performance of one's duties and/or one's working environment and the pathology". He alleges that he has been harassed and mobbed by his director and that his health problems "fall squarely" within the definition of occupational disease.

The complainant says that the decision to declare him "invalid" as well as not to recognise the occupational nature of his invalidity caused him great distress. He submits that he deserves some form of compensation.

He claims reinstatement as of 1 December 2005, together with salary arrears and interest. Subsidiarily, he asks to be awarded a pension for invalidity due to occupational disease under Article 14(2) of the Pension Scheme Regulations, plus arrears and interest, as from 1 December 2005. He also claims moral damages and legal costs.

C. In its reply the EPO submits that the Tribunal's case law has established that the findings of the Medical Committee are open to only limited review. Noting that the complainant has relied solely on a statement made by his physician – that improvement in his condition was "related to the fact that he is outside the EPO" – as proof that the Committee drew a manifestly erroneous conclusion, it argues that, on the contrary, it is the complainant who has drawn an erroneous conclusion from that statement. It adds that none of the members of the Committee envisaged the possibility of reintegrating him. The Committee drew the correct conclusion from the information at its disposal when it found that the complainant was "totally and permanently" unable to perform his duties. The Organisation also points out that the Service Regulations provide for the possibility of compulsory sick leave if the employee's state of health so requires.

According to the EPO, the Medical Committee was correct to conclude that the invalidity was not attributable to an occupational disease. Having examined whether there was a direct causal link between the complainant's pathology and the occupational environment, it unanimously found that there was no such link. Furthermore, the Organisation points out, the complainant has given no evidence of any harassment he allegedly suffered at work. Besides, internal appeals filed by the complainant relating directly or indirectly to this matter are pending.

The EPO submits that the complainant has been awarded the proper invalidity pension following findings reached by the Medical Committee after "a flawless procedure". It provides the Tribunal with information about the amount of his pension. It contests his claim for legal costs, stating that he has been represented by a serving official of the EPO who can deduct time from his normal working schedule in order to assist complainants.

D. In his rejoinder the complainant points out that the EPO's submissions include financial information about his pension that he considers to be "largely irrelevant" to the case; he questions the motivation behind this disclosure. The Organisation, he says, has also discussed internal appeals that are irrelevant to this case; he considers this to be an attempt to portray him as "a vexatious character".

He presses his plea that the Medical Committee erred in finding that he does not suffer from an occupational disease, and he maintains that he is entitled to costs.

E. In its surrejoinder the Organisation explains that it provided the Tribunal with financial information merely to illustrate certain provisions of the Service Regulations and Pension Scheme Regulations. It says it mentioned his other appeals in its reply in order to give the Tribunal "a full picture of the facts underlying the present complaint".

It disagrees that the Medical Committee erred in finding that the complainant did not suffer from an occupational disease. It maintains its position that he is not entitled to legal costs.

CONSIDERATIONS

1. The complainant impugns the decision of the President of the Office dated 23 November 2005 according to which "[h]aving regard to the decision of the Medical Committee", he should cease to perform his duties with effect from 1 December 2005, and should receive an invalidity pension.

2. He first asks the Tribunal to be reinstated as a permanent employee retroactive to 1 December 2005 and to be compensated for arrears in salary with interest. Subsidiarily, he asks to be awarded a pension in accordance with Article 14(2) of the Pension Scheme Regulations, which provides for an invalidity pension due to occupational disease, plus arrears with interest.

3. In support of his first claim the complainant puts forward two pleas. He submits, firstly, that when the Medical Committee met on 10 November 2005, the conditions required to decide on the case under Article 13 of the Pension Scheme Regulations were not fulfilled, because at that time he had not yet accumulated what he terms the maximum "*bona fide*" sick leave laid down in Article 62(2) of the Service Regulations; and, secondly, that the Medical Committee's conclusion according to which he was definitively and permanently unable to carry out his duties was manifestly erroneous.

4. The defendant organisation contests these two pleas. It argues that when the Medical Committee met on 10 November 2005, the complainant had taken more than the maximum period of sick leave, therefore there was no procedural fault in the Committee's action. Moreover, the Medical Committee, taking into consideration all the elements of the case, concluded unanimously that the complainant suffered from a total and permanent invalidity and therefore it cannot be said that the medical findings show any material mistake or inconsistency, or overlook some essential fact, or plainly misread the evidence.

5. Regarding the first plea, the Tribunal is of the opinion that when the Medical Committee met on 10 November 2005 the complainant had already accumulated the maximum allowable period of sick leave as defined in Article 62(6) of the Service Regulations which provides as follows:

"A permanent employee shall be entitled to paid sick leave up to a maximum of 250 working days, either in one unbroken period or in several periods within three consecutive years."

The compulsory absence has to be counted within the maximum period of sick leave allowed because no distinction is made between "sick leave" under paragraph 1 of Article 62 and "compulsory sick leave" under paragraph 5 of the same Article. The procedure started on 27 March 2003 when a letter was sent to the complainant by the Personnel Department stating that during the period from 28 March 2000 to 27 March 2003 he had been on sick leave for 307.5 days and that the President had appointed a medical practitioner to an Invalidity Committee. The complainant was asked to notify the Office (in writing within 30 days) of the medical practitioner he wished to appoint to that Committee. This information was repeated in a second letter on 11 November 2003, with the updated information that the complainant had been on sick leave for 335.5 days from 12 November 2000 to that date. These letters were sent, and the Medical Committee (as the Invalidity Committee was renamed from 1 January 2004) appointed, in order to avoid surpassing the maximum amount of sick leave allowed without intervention by such a Committee.

6. Coming to the second plea, the Tribunal finds that the Medical Committee's conclusion on 10 November 2005 that "[a]ccording to the EPO definition of [i]nvalidity, [the complainant] is permanently and definitively unable to perform duties at the EPO" cannot be defined as wrong. In fact, the Tribunal's power of review with regard to an act of technical evaluation (such as the Committee's medical evaluation of the complainant) is not limited only to procedural defects. The Tribunal does have full competence to say whether the medical findings show any material mistake or inconsistency or overlook some essential fact, or plainly misread the evidence (see Judgment 1752 under 9). The limit of this review is that, being scientifically based and scientifically relevant (absolute truth not existing in science), the Committee's evaluations should be accepted by the Tribunal unless they are considered clearly unreliable according to current scientific knowledge. In this case, the Medical Committee's evaluation, according to which it was unanimously decided (after having examined the complainant and the doctors' reports dated 31 August and 30 September 2005) that the complainant was permanently and definitively unable to perform duties at the EPO, is not seriously contradicted by any element. After 2 September 2004, the Medical Committee extended the complainant's sick leave until 1 September 2005, which allowed time for recovery and further evaluation of the complainant. The decision made on 10 November 2005 by the Medical Committee, based on reports by the medical practitioner appointed by the complainant and the one appointed by

mutual agreement as well as past examinations, is acceptable. Specifically, the report dated 30 September 2005, by the complainant's doctor, according to which there was "a substantial improvement in his health condition […] related to the fact that he [was] outside the EPO", clearly does not contradict the finding of the Medical Committee. The follow-up report by the same doctor dated 9 November 2005, according to which "there [was] some improvement" but the symptoms were still present, also maintains the credibility of the Medical Committee's conclusion. The Tribunal may not replace qualified medical opinion with its own, and the Tribunal finds that there is no element according to which it can be affirmed that these medical conclusions are abnormal according to current scientific knowledge.

7. The first claim must therefore be dismissed.

8. Regarding the second claim which is for the award of an invalidity pension due to occupational disease in accordance with Article 14(2) of the Pension Scheme Regulations, the Tribunal considers that it is clear from the available facts that the complainant has produced no specific evidence casting doubt on the EPO's contention that the complainant's invalidity is not attributable to an occupational disease. If, however, in the light of the appeals currently pending before the Organisation it appears that the complainant's health problems might have been directly or indirectly due to his working conditions, the Office will have to reconsider his rights to an invalidity pension under Article 14(2) of the aforementioned Regulations.

9. Consequently, the decision regarding the second claim has to be suspended pending the final decisions on the questions raised by the complainant in his internal appeals.

10. The complainant's claims for compensation for moral injury and for costs are therefore dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.