

119th Session

Judgment No. 3456

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth and seventh complaints filed by Mr R. W. G. on 10 October 2013 against the European Patent Organisation (EPO);

Considering Articles II, paragraph 5, and VII of Statute of the Tribunal and Article 7 of its Rules;

Having examined the complaints and related documents;

CONSIDERATIONS

1. The Tribunal joins these two complaints in this single judgment given that they are similar; they challenge similar decisions, are based on the same underlying facts and issues and involve the same parties.

2. In brief perspective, in January 2010, the complainant filed two internal appeals challenging the setting up of two separate reserve funds, by Administrative Council decisions CA/D 13/09 and CA/D 14/09, respectively, by the EPO. These funds were to cover insurance liabilities for pension recipients of the Organisation in addition to the existing principal fund, the Reserve Fund for Pensions and Social Security (RFPSS). The complainant insists that the two 2009 reserve funds adversely affected his interest as well as the interest of EPO staff members in the sense of Article 107 of the Service Regulations for Permanent Employees of the European Patent Office. The President of the EPO considered the internal appeals to have been “manifestly irreceivable and unfounded” and referred them to the Internal Appeals Committee (IAC) as Appeals Nos. RI/206/09 and

RI/207/09. The complainant was informed of the President's decisions on 25 March 2010. He seeks to impugn those decisions in his sixth and seventh complaints, which were filed on 10 October 2013.

3. When the complaints were filed with the Tribunal, the complainant had not received an actual final decision from the President of the EPO upon recommendation of the IAC. He asks the Tribunal to find that the internal appeal process was excessively delayed, and, accordingly, to accept and hear the complaints.

4. On the guidance of Judgments 3301, under 5, and 2479, under 2, for example, the Tribunal considers that these complaints constitute an abuse of process for the following reasons. First, they are essentially identical complaints. In the second place, they are clearly irreceivable on a number of grounds. The first is that the complaints do not impugn final decisions, as required by Article VII, paragraph 1, of the Tribunal's Statute (see, for example, Judgments 2479, 2948, 3050, 3301, 3302 and 3326). Moreover, the Tribunal has consistently held that the forwarding of the claim to the advisory appeal body, constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, which is sufficient to forestall an implied rejection (see Judgment 2948, under 7).

5. In the foregoing premises, the complaints must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 31 October 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ