

M. (No. 2)

v.

EPO

123rd Session

Judgment No. 3813

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr C. M. against the European Patent Organisation (EPO) on 10 March 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant impugns what he considers to be an implied decision to reject the internal appeal that he filed on 15 October 2015 following the rejection of his request for review challenging the Administrative Council's decision CA/D 2/15. He filed his complaint under Article VII, paragraph 3, of the Tribunal's Statute.

2. The Tribunal notes that by an e-mail of 29 October 2015, which the complainant has produced as an annex to his complaint, the Secretariat of the Internal Appeals Committee informed him that his appeal had been registered and that the details of the procedure would be communicated to him in due course.

3. The Tribunal's case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent authority for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3428, consideration 18, and 3146, consideration 12).

4. Given that the complainant's appeal has been referred to the Internal Appeals Committee, he cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his appeal has been implicitly rejected.

5. As the complainant has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Tribunal's Statute, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Drazen Petrovi , Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ