B. (No. 12)

v.

EPO

124th Session **Judgment No. 3887**

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 2 December 2013 and corrected on 28 January 2014, the EPO's reply of 13 May, the complainant's rejoinder of 4 September and the EPO's surrejoinder of 16 December 2014;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant contests the decision to dismiss him, for misconduct, with immediate effect and with reduction of pension entitlements.

In December 2012 the complainant, an official of the European Patent Office, the EPO's secretariat, received a reprimand as a disciplinary sanction for not having complied with the housekeeping standards and for not having followed the applicable electronic workflow for his 2011 staff reporting exercise. He was warned that further action might be taken in accordance with Article 93 of the Service Regulations for permanent employees of the Office in case of further misconduct.

On 1 March 2013 the Principal Director of Human Resources informed the complainant that since his disruptive and insubordinate

behaviour had continued and even worsened, he was suspended from service with immediate effect, and was no longer allowed to enter the EPO's premises during the period of suspension. As his behaviour was considered to constitute serious misconduct, the matter was referred to the Disciplinary Committee. The Principal Director asked the complainant to "inform the Office beforehand and request authorisation should [he] intend to travel outside The Netherlands".

The Disciplinary Committee issued its reasoned opinion on 30 July 2013. The majority of its members found that the complainant's behaviour formed a "pattern of practice", which demonstrated a manifest incapacity to perform his duties, and that he had displayed "objective professional incompetence" within the meaning of Article 52 of the Service Regulations. Indeed, he had failed to carry out work since 2010 and had refused to adhere to reasonable and lawful work-related managerial instructions. In the view of the majority, it was unlikely that the complainant could succeed as an examiner, or in any other function, in a lower grade. The majority therefore recommended that he be dismissed. Two members issued a minority opinion stating that their overall impression was that "of a person who [did] not act intentionally, and who need[ed] help, rather than disciplinary measures". They added that if the EPO insisted on imposing a disciplinary measure, an "expert report" on the complainant's ability to act intentionally in the current situation would seem a "condition *sine qua non*".

By letter of 6 September 2013 the President of the Office informed the complainant that his behaviour was clearly incompatible with the continuation of duties and that any reasonable prospects of improvement on his part were excluded. In view of the seriousness of his misconduct and the aggravating factors (in particular the absence of any improvement of his behaviour after having been sanctioned in December 2012, and warned several times), he had decided to apply to the complainant the most severe disciplinary sanction of dismissal with immediate effect and with reduction of his pension entitlements by one third. He added that the complainant would receive compensation corresponding to the statutory period of notice. The President further stated that the complainant could file a request for review of that decision. That is the impugned decision.

On 25 September 2013 the complainant filed a request for review against the decision of 6 September 2013. On 21 November the President notified the complainant of his decision to reject the request as unfounded. He added that that decision was excluded from the internal appeal procedure and that if the complainant considered himself adversely affected by it, he could file a complaint with the Tribunal.

The complainant asks the Tribunal to quash the decision of 6 September 2013, to cancel *ex tunc et ab initio* each one of the "several consequences, as induced by" the impugned decision and to order his reinstatement with retroactive effect to his previous position. He asks the Tribunal to authorise him to "stay further in same employment, as long as he would wish it, and to choose freely [...] the date on which he will retire". He also claims material and moral damages together with costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal means of redress and, subsidiarily, devoid of merit.

CONSIDERATIONS

1. The complainant impugns the President's decision dated 6 September 2013 to dismiss him (with immediate effect) from service under Article 93(2)(f) of the Service Regulations for reasons of disciplinary misconduct and to apply the most severe disciplinary sanction: to combine the dismissal with a reduction in the amount of the retirement pension by one third, respecting the statutory minimum pension laid down in Article 10, paragraph 3, of the Pension Scheme Regulations. The complainant requested review of that decision, in accordance with Article 109 of the Service Regulations, by letter dated 25 September 2013. In his final decision dated 21 November 2013, the President rejected that request and confirmed his 6 September decision to dismiss the complainant and reduce his pension by one third.

2. On 10 April 2013 the Principal Director of Human Resources, in accordance with Articles 100 and 52(2) of the Service Regulations, wrote a report concerning the complainant's behaviour at work. She

invited the Disciplinary Committee to deliver a reasoned opinion, in accordance with Article 102(1) and subsidiarily under Article 52(2) of the Service Regulations, on the complainant's alleged misconduct. The alleged misconduct was summarized as consisting mainly of the following elements:

> "• continuous express refusal to carry out regular search and examination work by repeated admission of spending working time on personal matters;
> • refusal to adhere to reasonable work-related management requests concerning fundamental issues of the employment framework, e.g. working time, reporting exercise;
> • maintaining a disruptive and uncooperative communication pattern."

The specific allegations were as follows:

(a) Refusal to carry out work as from 2010 at the latest.

(b) Refusal to adhere to reasonable and lawful work-related managerial instructions.

(c) Uncooperativeness as regards alleged problems with "MyFIPS".

(d) Continued refusal to comply with the electronic staff reporting procedure.

(e) Non-observance of the official working time rules.

(f) Use of the Office's resources for personal purposes.

(g) Refusal to comply with the orders regarding storage space.

(h) Disruptive communication pattern.

The Principal Director of Human Resources stated that the complainant's behaviour amounted to serious and gross misconduct justifying dismissal under Article 93(2)(f) of the Service Regulations or, alternatively and subsidiarily, dismissal in accordance with Article 52(1) of the Service Regulations.

3. In its reasoned opinion dated 30 July 2013, the majority of the members of the Disciplinary Committee found that the complainant "acted in a very logical and consistent manner that left no genuine doubt

concerning this legal accountability for his doing and that there [was] no need for any additional medical examination before concluding the disciplinary proceedings".

It considered that:

(a) The complainant had maintained a consistent behaviour (with regard to his obligation to carry out his duties as an examiner and adhere to reasonable and lawful work-related managerial instructions) over an extended period of time, which fell within the general meaning of "professional incompetence".

(b) The complainant's behaviour could not be attributed to impaired physical or mental capability.

(c) The complainant was obsessed with having allegedly wrong staff reports corrected and he believed that he had the right to prepare his litigation during his working hours.

(d) The complainant repeatedly refused to resume production unless his contested staff reports were revised and amended and his promotion in grade was readjusted to reflect the amended staff reports.

(e) The complainant admitted that his behaviour was unlikely to change in the future unless all litigation cases were solved according to his requests and demands.

(f) The complainant's behaviour amounted to "a 'grave cause' of manifest incapacity or incompetence to perform the duties assigned to him".

Consequently, the majority found, by applying Article 103(1), first sentence, second alternative, of the Service Regulations, that the complainant had proven incompetent in the performance of his duties and that dismissal in accordance with Article 52(1), first sentence, of the Service Regulations would be "appropriate, adequate and proportional" as it found that "there [was] no reasonable probability that the [complainant] could succeed as an examiner (or in any other function) in a lower grade".

4. The two members nominated by the Staff Committee wrote a minority opinion concluding that "the Office was and/or must have been aware that the [complainant] possibly had a medical problem of psychological nature"; that "the existing problems ha[d] been triggered by errors and possibly unfair treatment from the side of the Office"; and that "it seem[ed] possible and even likely that the Office [was] responsible for the [complainant's] present state of distress". They concluded that it was doubtful that the complainant had intended to stop working and that their impression of the complainant was "that of a person who [did] not act intentionally, and who need[ed] help, rather than disciplinary measures". They therefore recommended that having an expert report prepared on the complainant's ability to act intentionally would "seem a condition sine qua non" and that the failure to obtain such a report would amount to a failure in the Office's duty of care.

5. The final hearing, in accordance with Article 102(3) of the Service Regulations, took place on 28 August 2013. In a letter dated 6 September 2013 the President notified the complainant of his decision to dismiss him with immediate effect and to reduce the amount of his retirement pension by one third. He stated that he disagreed with three of the findings of the Disciplinary Committee majority. First, he disagreed that allegations (c) to (h), in the above-mentioned report of 10 April 2013, were of a "minor nature" and could be absorbed by allegations (a) and (b). The President considered that all allegations were distinct and breached different obligations under the Service Regulations and that they illustrated the severity and continuity of the complainant's misconduct. Second, he disagreed that allegation (g) was already covered by the reprimand of 11 December 2012 specifically as that allegation addressed a situation which occurred in 2013. Third, he disagreed with the recommendation to qualify the allegations as professional incompetence under Article 52 of the Service Regulations. He noted that the majority's legal assessment as expressed in paragraphs 23.1 to 23.4 of its opinion was not supported by the Service Regulations or the case law regarding the concepts of disciplinary misconduct and unsatisfactory service, though he concurred with the majority's finding that the complainant's refusal to work was an uncontested and admitted

fact. He pointed out that "the case-law clearly qualifie[d] refusal to work and insubordination as acts of misconduct" and that "[r]efusal to work, especially after several reminders and notification of applicable consequences, [was] not an '*inability*' or '*objective failure*' to discharge duties". With regard to the question of "disciplinary liability", he stated as follows:

> "14. By statutory definition (Art 93(1) [of the Service Regulations]) disciplinary liability presupposes intentional or negligent failure to comply with the statutory obligations. It thus comprises expressly declared refusal to perform work.
>
> 15. The fact that your actions have in view of the majority formed a pattern of '*recurring and consistent behaviour over an extended period of time*', which has been carried out in a '*very logical and consistent manner that left no genuine doubt about this legal accountability*' (paragraphs 33 and 35a), the fact that no lack of accountability has been ever invoked by you, and the admission that you are unwilling to review your behaviour in the future (paragraph 35e) all speak for the full accountability and intentional nature of your actions. The majority confirms that your behaviour could not be attributed to impaired physical or mental capability (paragraph 35b).
>
> 16. The persistency and recurring nature of your behaviour has reached an extent which has led the majority to characterise your conduct as conscious but '*obsessive*'. As already explained, this cannot lead to qualifying your behaviour as professional incompetence.
>
> 17. I have noted that the minority has in this context raised doubts about your ability to act intentionally and recommended to obtain an expert opinion on this matter. The minority has based its relevant argumentation on a selective reading of the facts provided by the Office, i.e. not on its own observations, investigations or on your own defence.
>
> 18. In this respect I note that at the hearing you clearly stated '*I was not sick*', [(] page 26 of the minutes). Moreover, the minority is in this respect incorrect to state (paragraph 3) that an examination did not take place because of [the psychiatrist's] insistence to have forms signed. In view of your clearly documented refusal to sign under no circumstances (paragraph 10.2.6 of the opinion) and the legal obligation to obtain an authorisation for exchanging any medical information, you prevented the examination from taking place.
>
> 19. It is in this context once more noted that the Office initiated in 2012 the medical examination out of its duty of care i.a regarding your own statements to your line manager and colleagues (cf. the invitation dated 16.4.12). The Office has never raised a question nor had any indications about you being unable to defend your interests or unaccountable for your actions, especially

> regarding your refusal to work and other charges raised in these proceedings and which you have admitted as being voluntary actions.
>
> 20. Furthermore, none of the circumstances of the case or in the present disciplinary proceedings lead to any doubts about your ability to defend yourself, control your behaviour or understand your actions. The pursuit of a substantial number of litigations, the numerous communications submitted within these proceedings, and the involvement of an assistant are all circumstances proving the contrary. The minority is mistaken to consider the state of your previous office space as proof in this respect – i.e. following the measures taken by the Office, the OHS [Occupational Health Services] could confirm upon its inspection on 4.12.12 that '*the housekeeping of the new room S13A21 is reasonable and within the acceptable limits*'. You were thus able to control your environment. I also do not agree with the minority that you have been overly present in the Office, instead you applied a working time pattern at your personal convenience, involving late arrivals and long breaks.
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> 21. The only defence put forward by yourself has been the alleged time spent for pursuing your litigation (paragraph 28). This defence cannot be accepted, nor does it constitute a mitigating factor. The staff member has no right to leave work by way of protest against an administrative decision and cannot take the law into his own hands (ILOAT Judgments No 1277, consideration 12, No 1550, consideration 7). As regards your claim raised at the Committee's and final hearing that 'some work had been done' reference is made to paragraph 25 of the majority opinion – '*the Committee could establish that (almost) no examiner's work had been done by the [complainant] and concluded that the level could hardly be qualified as performing the primary duties assigned to the [complainant]*'."

The President disagreed with the minority opinion in its entirety. He noted that the minority was incorrect in finding that the complainant's performance had not given rise to objections during the first 20 years of service, as there had been strong fluctuations in the complainant's performance over the years since he joined the EPO. He rejected the finding that the EPO had not provided support to the complainant, and he noted that the minority had raised doubts about the complainant's ability to act intentionally, recommending that the President obtain an expert opinion on the matter, but, that the two members who signed the minority opinion had based their argumentation on "a selective reading of the facts provided by the Office, i.e. not on its own observations, investigations or on [the complainant's] own defence." In conclusion, the President found that the facts on which the charges were based qualified as misconduct, violating the general standards of conduct required under

Articles 5(1), 14(1) and 24 of the Service Regulations. He went on to state that "[t]he continuous and repetitive nature of [the complainant's] misconduct which concern[ed] the very fundamental obligations and different specific statutory duties, as well as lawful managerial instructions, combined with the fact that [he] acted intentionally [were] circumstances which aggravate[d his] liability".

6. The complainant bases his complaint on the following grounds:

- There was no basis for the decision, dated 1 March 2013, to suspend him from duty.
- The EPO unlawfully forbade him from leaving the Netherlands.
- Denial of due process.
- The first hearing of the Disciplinary Committee violated his right to be heard.
- The EPO was barred from referring to any staff reports that he had challenged and which were hence not yet final when the disciplinary proceedings were initiated.
- Lack of duly established delegations of authority.
- Harassment and retaliation for having filed internal appeals and complaints.
- Lack of preliminary meeting regarding his professional activities prior to establishing his last staff report.
- Lack of proof or substantiation of the accusations on the basis of which the sanction of dismissal with immediate effect with reduction of his retirement pension was taken.
- Lack of any misconduct, crime, wrongdoing, insurgency, fault, insubordination, inappropriate act, fraud, refusal to work, or theft on his part.
- Breach of his right to be personally heard by the President prior to his dismissal.
- Lack of compatibility between the President's decision and the opinions of the majority and/or the minority of the Disciplinary Committee.
- The EPO's refusal to acknowledge the "particularly substantial amount of real work" he had performed.

- The difficulties he had faced when challenging three successive versions of the staff report for the year 2002.
- Difficulties associated with challenging all subsequent staff reports.
- Breach of the EPO's duty of care.
- Breach of Article 53 of the Service Regulations in deciding that his dismissal was with immediate effect.
- Breach of the principle of proportionality in reducing his retirement pension by one third.
- The possibility of a pension reduction was not requested in the report of 10 April 2013.
- Inadequate reference to Judgments 1363, 1277 and 1550, and failure to refer to Judgments 852, 880, 1393, 1447, 1984, 2930, 2995, 3062 and 3227.
- Breach of Article 88 of the Service Regulations in cutting two months' salary.
- Lack of notice regarding the early termination of health insurance.

7. The EPO raises the question of the receivability of the present complaint, noting that the complainant insists on impugning the President's decision of 6 September 2013 instead of the actual final decision of 21 November 2013. The Tribunal finds that as the complainant filed a request for review of the 6 September decision in accordance with Article 109 of the Service Regulations and has received the final decision of 21 November, which is included in the documentation provided in this case, it may treat the complaint as impugning the actual final decision of 21 November 2013.The complaint is therefore receivable.

8. The complainant had gradually reduced the amount of the examiner's work he performed over recent years, replacing it with personal work on his internal appeals and complaints before the Tribunal, until he eventually reached the point where "(almost) no examiner's work [was] done", as noted by the majority opinion of the Disciplinary Committee. The complainant was convinced that the time he spent on

litigation and legal issues must be considered as working time, stating: "these litigations are not of a private nature but of a very professional nature, being induced by the rather numerous unfair decisions which were imposed on him by the Hierarchy of the European Patent Office".

9. The majority based its recommendation to dismiss the complainant on Article 52(1) of the Service Regulations, considering that the complainant was guilty of professional incompetence. The President however based the complainant's dismissal on misconduct under Article 93(2)(f). Those Articles provide (in relevant part) as follows:

"**Article 52**
Professional incompetence

(1) Subject to Article 23 of the Convention, a permanent employee who proves incompetent in the performance of his duties may be dismissed.

The appointing authority may, however, offer to classify the employee concerned in a lower grade and to assign him to a post corresponding to this new grade.

(2) [...]"

"**Article 93**
Disciplinary measures

(1) Any failure by a permanent employee or former permanent employee to comply with his obligations under these Service Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

(2) Disciplinary measures shall take one of the following forms:

(a) written warning;

(b) reprimand;

(c) deferment of advancement to a higher step;

(d) relegation in step;

(e) downgrading;

(f) dismissal and, where appropriate, reduction in the amount of the severance grant under Article 11 of the Pension Scheme Regulations or of the retirement pension and, where applicable, of the portion of remuneration owed as a result of participation in the salary savings plan. Any such reduction shall not be more than one third of the sum in question and, as applied to the pension, shall not make its amount less than the minimum laid down in Article 10, paragraph 3, of the Pension Scheme Regulations."

10. The Tribunal notes that both Articles 52 and 93 of the Service Regulations provide for an employee's dismissal, but that only Article 93 provides for a reduction in the amount of the retirement pension. Article 93 requires intention or negligence. Article 52 deals with the inability of an employee to fulfil her/his professional duties. Determining which article is an appropriate basis for the complainant's dismissal requires an assessment of the complainant's behaviour while also assessing his abilities. This issue was addressed by the Disciplinary Committee, the members of which drew different conclusions and issued a majority and a minority opinion. The President, in his decision of 6 September 2013, confirmed by his final decision of 21 November 2013 at the end of the procedure provided under Article 109 of the Service Regulations, stated that having considered the majority and minority opinions of the members of the Disciplinary Committee, he came to a different conclusion. The President specifically considered that issue under points 15 to 20 of his 6 September 2013 decision, quoted above.

11. In the present case there was a question, raised in 2012 by the complainant's line manager and colleagues, about the complainant's mental health, as his behaviour had changed and he seemed obsessed with working on his personal litigation during working hours instead of performing his duties as an examiner in accordance with Article 14(1) of the Service Regulations, which provides, in relevant part, that a permanent employee shall carry out his duties and conduct himself solely with the interests of the EPO in mind. The EPO ordered that the complainant undergo a medical assessment by the Office's Medical Adviser, in accordance with Article 26 of the Service Regulations. The complainant attended that appointment and the Medical Adviser notified the EPO that an assessment by a psychiatrist would be necessary prior to him writing a final report. The complainant went to the appointment that was scheduled for him with the psychiatrist, but he refused to sign the "Declaration of consent to the exchange of confidential medical information" giving permission to the psychiatrist to share his medical assessment with the Medical Adviser (and he also refused to sign the declaration stating that he had refused to sign the permission form). Consequently, the psychiatrist was unable to assess the complainant and

the appointment ended without a professional evaluation. The Medical Adviser notified the Human Resources Department that without a psychiatric evaluation of the complainant's mental health, he was unable to complete his report of the complainant's health situation.

12. The Tribunal notes that the main factor in not reaching the medical assessment, which was attempted in 2012, was the complainant's refusal to comply in violation of Article 26(2) of the Service Regulations, which reads as follows:

> "[A] permanent employee shall submit to any medical examination ordered by the President of the Office in the interests of the staff or of the service."

13. The complainant's refusal to fulfill his obligations with regard to his work as an examiner is well-established. However, the President's decision to dismiss the complainant under Article 93(2)(f) of the Service Regulations is vitiated by the fact that neither the President, nor the Disciplinary Committee could have made a proper assessment of the allegations without taking into account whether the complainant acted intentionally, and in control of his faculties, or if the complainant suffered from a mental illness that prevented him from behaving in accordance with his obligations as a permanent employee. Therefore, the principle of due process and the duty of care require the Disciplinary Committee, in accordance with Article 101(3) of the Service Regulations (which provides that "[i]f the Disciplinary Committee requires further information concerning the facts complained of or the circumstances in which they arose, it may order an inquiry in which each side can submit its case and reply to the case of the other side") to order a medical assessment of the complainant by an expert, and the convening of a Medical Committee if necessary. The medical expert(s) shall also take into consideration all documents in the file submitted to the Tribunal.

14. The complainant was suspended from duty in accordance with Article 95(1) of the Service Regulations with effect from 1 March 2013, with a 50 per cent reduction of his basic salary. The reduction was subject to the limitation period set out in Article 95(2) and (3) of the Service Regulations which provide in relevant part as follows:

> "(2) The decision suspending the employee shall specify whether he is to continue to receive his remuneration during the period of suspension or what part thereof is to be withheld; the part withheld shall not be more than half the employee's basic salary.
>
> (3) A final decision in the proceedings shall be given within four months from the date of suspension. If no decision has been given by the end of this period, the employee shall again receive his full remuneration."

The disciplinary proceedings lasted longer than the four months provided for under Article 95(3) of the Service Regulations as the Disciplinary Committee held a second hearing on 1 July 2013 as a precautionary measure in response to the complainant's claim that he had not been notified of the first hearing, which was held on 27 May 2013. The complainant was reimbursed the withheld amounts with his July pay in accordance with Article 95(3). By letter of 23 July 2013, the German postal service informed the Chairman of the Disciplinary Committee that the complainant had been informed that the letter of 26 April 2013 (notifying the complainant of the final composition of the Disciplinary Committee and inviting him to the 27 May hearing) was available for collection but that he had failed to collect the letter. The EPO, considering that the complainant breached his obligation to receive the communications of the EPO in good faith, decided to recover (under Article 88 of the Service Regulations) the amounts reimbursed because the delay in the proceedings was due to the complainant. The Tribunal finds that the EPO acted appropriately and that the complainant's claims in this regard are unfounded.

15. The complainant raises several claims which are either irreceivable, irrelevant to the present complaint, or unfounded. Specifically, his harassment claim is irreceivable for failure to exhaust all internal means of redress. The claims relating to his staff reports are irrelevant to the present case, and in any event, some of them have been challenged internally and/or before the Tribunal. His claim concerning the decision to suspend him from duty is unfounded as it was also based on his "complete inability to carry out any of [his] official duties". The claim that the EPO unlawfully forbade the complainant from leaving the Netherlands is unfounded. As written in the letter of suspension dated 1 March 2013, the complainant was informed that "it [was] of

utmost importance for [him] to remain available for the delivery of any correspondence (likely to occur via courier post) and contact with the Office. [He was] hereby [...] requested to immediately provide a valid e-mail address and telephone number. Furthermore, [he was] requested to inform the Office beforehand and request authorisation should [he] intend to travel outside The Netherlands." The complainant's assertion that there was a lack of duly established delegations of authority is unsubstantiated. The complainant has not provided any evidence showing that any official had acted ultra vires. The claim that the report of 10 April 2013 did not contain any request to consider the most severe sanction of a possible reduction in the retirement pension in addition to his dismissal and this was legally flawed, is an issue that the Tribunal need not resolve because the impugned decision is to be set aside in any event.

16. In light of the above considerations, the decision of 21 November 2013 must be set aside in the part regarding confirmation of dismissal for misconduct in accordance with Article 93 of the Service Regulations, as will be the same part of the decision of 6 September 2013. The case must be sent back to the EPO which will order a medical assessment of the complainant and, if necessary, the convening of a Medical Committee. In the circumstances, no order is made for reinstatement. In addition, in the absence of an expert psychiatric opinion that the complainant was not suffering from a psychiatric illness, it would be unlawful for the President to dismiss the complainant for misconduct, which, in this case, involves intentional behaviour, though he plainly could for unsatisfactory service.

17. The complainant is entitled to moral damages stemming from the flawed decision to dismiss him with immediate effect and with a reduction in his retirement pension, which the Tribunal awards in the amount of 20,000 euros. Considering the complainant admitted that he used his working hours to prepare his personal litigation (which is against the rules of the EPO), he is not entitled to an award of costs.

DECISION

For the above reasons,

1. The decision of 21 November 2013 is set aside in the part regarding confirmation of dismissal for misconduct in accordance with Article 93 of the Service Regulations, as is the same part of the decision of 6 September 2013.
2. The case is sent back to the EPO in accordance with consideration 13, above.
3. The EPO shall pay the complainant 20,000 euros in moral damages.
4. All other claims are dismissed.

In witness of this judgment, adopted on 17 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ