

T. (No. 50)

v.

EPO

132nd Session

Judgment No. 4443

THE ADMINISTRATIVE TRIBUNAL,

Considering the fiftieth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 14 December 2020;

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. In May 2015 the complainant filed with the Tribunal his 29th complaint impugning a decision of the President of the European Patent Office, the EPO's secretariat, which concluded an internal appeal procedure by rejecting his claims concerning his reckonable professional experience for promotion purposes.

2. Following the public delivery of Judgments 3694 and 3785, in which the Tribunal found that the composition of the Appeals Committee which had made recommendations to the President of the Office at the material time was not lawful, the President decided to withdraw all final decisions taken by him on the basis of recommendations of the Appeals Committee acting in the same unlawful composition, and to refer back the underlying appeals to a newly-composed Appeals Committee for an opinion. The complainant was notified that this withdrawal concerned also the decision which he impugned in his pending 29th complaint before the Tribunal.

3. The complainant, arguing that he had not raised the objection to the composition of the Appeals Committee, considered that the President's withdrawal decision constituted a decision taken *ultra vires* and that it was contrary to the principle of legal certainty. Accordingly, he maintained his 29th complaint and refused to participate in the appeal procedure "unilaterally initiated by the EPO without [his] consent" before the newly-composed Appeals Committee. As the case law provides that there should be no parallel proceedings on the same issue, he argues that his "hands were tied" because his complaint before the Tribunal was pending.

4. By Judgment 4323, delivered in public on 24 July 2020, the Tribunal dismissed the complainant's 29th complaint because it found that, as a result of the withdrawal of the impugned decision, the complaint was without object. This reasoning was already developed in Judgment 4256.

5. In the meantime, the internal appeal resulting from the President's withdrawal of the final decision and his referral of the case back to a newly-composed Appeals Committee, came to an end by the adoption of a new final decision again rejecting the complainant's request. He did not file a complaint against this new decision with the Tribunal.

6. Following the public delivery of Judgment 4323, the complainant asked the President of the Office to issue a fresh final decision regarding the content and claims put forward in the internal appeal underlying his 29th complaint or, alternatively, he proposed that an amicable solution be reached, so as to avoid referral of the same matter back to this Tribunal. In the present complaint, the complainant impugns the President's decision to reject both these requests. He also contends that the President implicitly rejected his request for costs which he made with reference to considerations 6 to 8 of Judgment 2853, allegedly applicable to him by virtue of Judgment 4256.

7. Regarding this last claim, the Tribunal notes that the statement on costs which it included in Judgment 4256 was not repeated in Judgment 4323 and hence is not applicable to the complainant.

8. The complainant argues, as he did in the complaint leading to Judgment 4323, that the President's withdrawal of the final decision on his appeal was unlawful; the referral of the appeal back to the Appeals Committee was equally unlawful; and the Tribunal was wrong in considering the list of withdrawn decisions which had been provided, without consulting him, by the EPO.

9. The first two issues have already been conclusively determined by the Tribunal in Judgments 4131 and 4256, both of which were delivered prior to the filing of the present complaint. There is nothing in the complainant's submissions that would lead the Tribunal to depart from those precedents in this case. Nor does he put forward any convincing argument as to why the EPO should have consulted him with regard to its list of cases involving decisions withdrawn by the President. These pleas are therefore rejected.

10. In the present case, the complainant argues mainly that by refusing to re-open his case, the President created a procedural trap and that, if his present complaint were rejected again, he would lose his "right of receiving justice for the claims rightfully filed in good time with this Tribunal" in his 29th complaint.

11. The complainant is wrong. The claims underlying his 29th complaint will never be examined by the Tribunal, not because there was a procedural trap, but because the complainant insisted on his own incorrect interpretation of the legal implications of the Tribunal's decisions in Judgments 3694 and 3785. He simply refused to participate in the internal appeal procedure and failed to impugn the final decision adopted at the end of that procedure. It is firmly established in the case law that, in order to comply with Article VII, paragraph 1, of the Statute of the Tribunal, which provides that a complaint will not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations, the complainant must follow the available internal appeal procedures properly (see, for example, Judgments 3296, consideration 10, and 3749, consideration 2). The case law further states that a staff member of an international organisation cannot of her or his own initiative evade the requirement that internal remedies must be exhausted prior to filing a complaint with the Tribunal

(see Judgments 4056, consideration 4, 3458, consideration 7, 3190, consideration 9, and 2811, considerations 10 and 11, and the case law cited therein). In the circumstances of this case, the complainant has only himself to blame for the fact that his claims will not be examined.

12. His request to the President to re-open his case following the dismissal of his 29th complaint in Judgment 4323 for reasons already explained in Judgment 4256 had no legal foundation and the President's decision not to accede to the complainant's requests was not unlawful.

13. In the foregoing premises, the complaint is clearly devoid of merit and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 June 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ