

**T. (No. 25), R. (No. 3), T. (No. 12)
and W. (No. 9)**

v.

EPO

(Application for execution)

137th Session

Judgment No. 4785

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 4429 filed by Mr I. T. on 24 January 2023, the reply of the European Patent Organisation (EPO) of 8 May 2023 and the complainant's email of 31 May 2023 informing the Registrar of the Tribunal that he did not wish to submit a rejoinder;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. On 7 July 2021, Judgment 4429 was delivered in public. That judgment addressed four complaints which had been joined for the purposes of rendering one judgment. One of the complainants, Mr T., believes the judgment has not been executed as it required. Accordingly, on 24 January 2023, he filed what purports to be an application for the execution of the judgment.

2. The relevant background, the issues raised in the original proceedings and the reasoning of the Tribunal are set out in Judgment 4429. Consideration 6 of the judgment reads:

“6. In light of the above, the Tribunal decides that, as the Administrative Council implicitly rejected the complainants’ request to consider their 21 November letter as an internal appeal if it did not approve their initial request to sanction the President, the implied decisions are unlawful and must be set aside. The cases will be remitted to the EPO for the complainants’ appeals to be examined in accordance with the applicable rules. Considering that the cases will be sent back to the Organisation for a proper appeal procedure to be followed, the complainants are not entitled to an award of moral damages. As they partially succeed, they are entitled to costs in the total amount of 3,000 Swiss francs. All other claims are dismissed.”

The order the complainant seeks to enforce by this application was in the following terms:

“2. The cases are sent back to the EPO in accordance with consideration 6, above.”

3. In this application, the complainant sets out in his brief, the relief he seeks, apart from moral and punitive damages for delay, in the following terms:

“I respectfully ask the Tribunal to clarify its Judgment [...] 4429 in that the Administrative Council, which is the Competent Authority capable to exercise Disciplinary Power upon a President who has potentially acted with misconduct, has to examine the merits of the instant case or appoints an Appeals Committee under its control to that end.”

4. The EPO has filed a reply. The complainant declined to file a rejoinder. The EPO recounts in its reply the steps that had been taken to comply with the order including remitting the matter to the Appeals Committee which, in turn, registered the appeal in August 2021. The Appeals Committee subsequently received written submissions from the parties. By May 2022, the exchange of written submissions was completed. The EPO correctly observes, in its reply, that the appeal is pending before that body though notes that by virtue of Judgment 4550, delivered in July 2022, the composition of the Appeals Committees within the EPO (necessarily including the instant one) was irregular. For some months thereafter, the EPO has taken steps to regularise the

position. The Tribunal is satisfied that the appeal will be heard, as the EPO explained in its reply.

5. The application for execution should be dismissed as unfounded. The EPO requests a costs order against the complainant “in an amount the Tribunal deems appropriate”. On balance, the Tribunal is not satisfied this is an exceptional case warranting the order for costs as sought (see, for example, Judgment 4487, consideration 17).

DECISION

For the above reasons,

The application for execution is dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 2 November 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal’s Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER