Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. (Nos. 18, 19 and 20)

v.

EPO

137th Session **Judgment No. 4799**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighteenth complaint filed by Mr S. C. F. against the European Patent Organisation (EPO) on 15 July 2019 and corrected on 24 September, the EPO's reply of 6 January 2020, the complainant's rejoinder of 7 February 2020 and the EPO's surrejoinder of 2 June 2020;

Considering the nineteenth complaint filed by the complainant against the EPO on 15 July 2019 and corrected on 9 September, the EPO's reply of 6 January 2020, the complainant's rejoinder of 7 February 2020 and the EPO's surrejoinder of 2 June 2020;

Considering the twentieth complaint filed by the complainant against the EPO on 15 July 2019 and corrected on 9 September, the EPO's reply of 6 January 2020, the complainant's rejoinder of 7 February 2020 and the EPO's surrejoinder of 2 June 2020;

Considering the letter of 12 January 2023 by which the EPO informed the Registry of the Tribunal that it had paid 100 euros in moral damages to the complainant for the irregular composition of the Appeals Committee, as was done in Judgment 4550;

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

Having examined the written submissions;

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

In 2008, the European Patent Office, the EPO's secretariat, discussed the restructuring of Directorate-General 1 and the future direction of its Berlin sub-office. It developed the concept of "area of competence", which referred to the concentration of all work relating to a technical field with a single group of examiners working on one site of employment where Directorate-General 1 was active. In December 2008, the staff was informed of the decision to create and implement the area of competence in the Berlin sub-office.

On 9 November 2011, the President of the Office introduced a procedure to support the implementation of areas of competence in Directorate-General 1 ("the implementation procedure"). It provided inter alia an "Implementation Resolution Process" if the areas of competence implementation plans led to complaints. It provided that if the complaint could not be resolved by the parties in disagreement, any party may submit the complaint to the Vice-President of Directorate-General 1, in writing, one month after the publication of the final implementation plan. The Vice-President shall then submit the complaint to the Area of Competence Implementation Support Committee with the request to mediate or provide a recommendation. After receiving a closure report from the Committee, the Vice-President takes a decision on the complaint. The President's decision also provides that the "creation and implementation of an [area of competence] shall be stopped until [the Vice-President of Directorate-General 1's] decision has been communicated to all parties concerned".

On 10 October 2014, the Vice-President of Directorate-General 1 published the final cluster area of competence plans for 2015, which foresaw inter alia the transfer of the area of competence G01R in Directorate-General 1 from Berlin to Munich as from 1 January 2015. Hence, the area of competence G01R, which was split between Munich and Berlin, would be on one site only.

Complaint No. 18

The complainant, who was a patent examiner in the area of competence G01R in Berlin, contests the decision to reassign him pursuant to the closure of that area of competence in Berlin, and to reallocate some patent files.

On 16 October 2015, the complainant was informed that he was reassigned, as of 1 January 2016, to a different technical field and Directorate in Berlin. In January 2016, he requested a review of the 16 October 2015 decision to "pursue the decision to close the [area of competence] G01R in Berlin" and to reassign him and his colleagues to a new technical field. In February 2016, he requested the review of the "re-allocation" of certain patent files for which he was a member of the Examining Division responsible for their examination. Both of his requests were rejected, and he filed an appeal with the Appeals Committee early June 2016 against these rejections. The appeals were registered under the same appeal number RI/2016/070.

Having received the recommendations of the Area of Competence Implementation Support Committee on the internal complaint filed by the complainant against the final cluster area of competence plans for 2015, the Vice-President of Directorate-General 1 informed him, on 9 December 2015, that his reassignment as of 1 January 2016 was confirmed. He added that the complainant should discuss with his new director the number of files he could retain from the stock in the area of competence G01R in order to ensure a smooth transition. The complainant requested a review of the 9 December 2015 decision to "pursue the decision to close the [area of competence] G01R in Berlin" and the decision to reassign him, and his colleagues, to technically new and different fields and directorate as of 1 January 2016. The request was rejected in May 2016, and he filed an appeal with the Appeals Committee in August 2016. The appeal was registered under RI/2016/087.

The Appeals Committee heard the complainant orally in September 2018, before he retired on 1 December 2018. It rendered, on 15 February 2019, a joint opinion on appeals RI/2016/070 and RI/2016/087. The Appeals Committee rejected the complainant's procedural comments

concerning the oral hearing and its composition on the ground that applicable rules were followed, and that he was not put at a disadvantage. It held that his appeals were receivable only insofar as they were directed against individual decisions having a direct effect on his rights and duties, that is to say the decision to assign him to a different directorate and to move him to a new technical field. It found that appeal RI/2016/070 was irreceivable insofar as the complainant challenged the 16 October 2015 decision, which was not a final decision given that he had an internal complaint pending before the Area of Competence Implementation Support Committee against the final cluster area of competence plans for 2015. Only the decision of 9 December 2015, which was taken on the internal complaint, constituted an appealable administrative decision. The appeal was also irreceivable insofar as it was directed against the decision to reallocate some of the complainant's patent files as such decision was purely managerial and therefore not liable to affect his status and conditions of employment. The Appeals Committee also found that appeal RI/2016/087 was receivable only with respect to the complainant's reassignment as confirmed by the decision of 9 December 2015, which was an individual decision directly affecting his rights and duties. The Appeals Committee found no formal flaw, which could lead to the conclusion that the President of the Office did not exercise his discretion lawfully or that the reassignment decision was unjustified. It stressed that the general decision to transfer the area of competence G01R was a general management decision for which it could not assess the appropriateness. It stressed that its lawfulness could only be examined in the context of an appeal against the individual implementing decision. It therefore recommended dismissing the appeal in its entirety.

By a letter of 15 April 2019, the Vice-President of Directorate-General 4, acting on delegation of authority from the President, informed the complainant that she endorsed the Appeals Committee's recommendation for the reasons it stated, except regarding the conclusion that the decision to close the area of competence G01R was of a general nature. In her view, the decision to close the area of competence in question was an "organisational decision" that was not open to challenge. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision *ab initio*. He also asks the Tribunal to quash the decision to reallocate some specific patent applications to different examining divisions and allocate them – as far as possible – to the respective examining divisions, which were originally responsible for the respective examination procedures. He seeks the replacement of former Director 1504, who was the reporting officer for 2015, by an officer who was not involved in the disputes underlying his sixth and tenth complaints. He further asks the Tribunal to complement the fact-finding and "taking of evidence", and to give him the opportunity to comment on any facts or evidence submitted in the reply. He also seeks the quashing *ex tunc* of the decision to close the area of competence G01R in Berlin, to "reset the G01R part of the final implementation plan to the corresponding G01R part of the final implementation plans of 2013 and 2014 and thereby maintaining the [area of competence] G01R in Berlin in the status therein defined as 'Already full [area of competence]' and 'Completed'". In addition, he claims moral damages, including for undue delay in the examination of his appeal and procedural violation, as well as costs and compound interest at the rate of 8 per cent per annum on all amounts due. He adds that he maintains in full the requests he made in his joint appeals RI/2016/070 and RI/2016/087 without spelling out these requests.

Subsidiarily, he asks the Tribunal to declare the Appeals Committee's opinion null and void, the "whole appeals procedures" null and void *ab initio*, and to remit the "underlying appeals" to the EPO for examination by a duly composed Appeals Committee, with the order to consider the merits of the appeals. He adds that he "accepts" that his complaint is "directly and eventually finally judged" by the Tribunal and that a "further remittal [to the Appeals Committee] is thus only requested on a subsidiary basis". Lastly, he seeks compensation for procedural delay and violations, and costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable for failure to exhaust internal means of redress insofar as he contests the decisions to close the area of competence G01R in Berlin and to reassign him. In any event, the decision to close the area

of competence G01R was an organisational decision and thus it was not open to challenge. The complaint is moot regarding the decision to reassign the complainant given that he has retired. Subsidiarily, the complaint is unfounded. The EPO makes a counterclaim for costs considering that the complaint is an abuse of process. It asks that the complainant bear his costs.

Complaint No. 19

The complainant contests the decision to reallocate some patent files in the context of his reassignment. He was reassigned from Directorate 1504 to Directorate 1503, both located in Berlin as from 1 January 2016.

By an email of 22 December 2015, the complainant was informed, inter alia, by his new director that his research files would be taken away from him together with the files for which no first communication had been written. On the following day, the complainant asked him to confirm that the email was an individual decision within the meaning of Articles 106 and 107 of the Service Regulations for permanent employees of the European Patent Office. His request remained unanswered.

In May 2016, the complainant requested a review of the 22 December 2015 decision alleging, inter alia, that it might be arbitrary and that his new director might not have been impartial. The contested decision constituted an attack to his professional dignity, a hidden disciplinary sanction and unduly interfered with the responsibilities vested by the European Patent Convention in examining divisions of which he was a member.

The request was rejected on 13 July 2016 as manifestly irreceivable *ratione temporis* and *ratione materiae*. The complainant filed an appeal with the Appeals Committee on 13 October 2016, which was registered under RI/2016/129. Following the complainant's retirement in December 2018, the secretariat of the Appeals Committee informed him, in January 2019, that the presiding member had placed the appeal on the agenda for a possible consideration under the summary procedure. In

February 2019, the complainant objected to the use of the summary procedure and to the Appeals Committee's composition alleging possible partiality.

The Appeals Committee deliberated on the appeal on 18 February 2019 and issued its opinion on 15 March 2019. It rejected the allegation of partiality on its part on the ground that it was too vague. It unanimously considered the appeal to be manifestly irreceivable and therefore treated it under the summary procedure. It held that the complainant's main claim to set aside the decision to reallocate certain patent files was moot since he had retired, only the claim for moral damages for procedural flaws remained a live issue. The Appeals Committee nevertheless stated that the allocation of files was a managerial decision made in the context of a change of directorates, and that it did not affect the complainant's status and conditions of employment. The Appeals Committee noted that the complainant had also contested the reallocation of files in an earlier appeal and stressed that he could not submit the same matter for decision in more than one proceeding. On a subsidiary basis, it observed that the original decision concerning the reallocation of files was communicated to him on 22 December 2015 and that he filed his request for review on 23 May 2016, outside the prescribed time limits. His attempt to requalify the nature of the clear 22 December 2015 decision by asking for a confirmation of it, thus trying to defer the start of the prescribed time limit for filing a request for review, was not acceptable.

By a letter of 15 May 2019, the Principal Director of Human Resources, acting on delegation of authority from the President, informed the complainant of her decision to endorse the Appeals Committee's recommendation for the reasons it stated. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision *ab initio*, to complement the fact-finding and "taking of evidence" and to give him the opportunity to comment on any facts or evidence submitted in the reply. He also asks the Tribunal to quash the "decisions of former [Principal Director 1504] and former [Director 1503]", to reallocate some patent files with which he was entrusted to different

examining divisions, and to allocate them – as far as possible – to the respective examining divisions, which were originally responsible for the respective examination procedures. He further claims moral damages, including for undue delay in the examination of his appeal and procedural violation, costs, and compound interest at the rate of 8 per cent per annum on all amounts due.

Subsidiarily, he asks the Tribunal to declare the Appeals Committee's opinion null and void, to declare the entire "appeals procedures" null and void *ab initio*, and to remit the "underlying appeal" to the Appeals Committee for examination by a duly composed and balanced Appeals Committee, with an order to consider the merits of the appeal. He adds that he "accepts" that his complaint is "directly and eventually finally judged" by the Tribunal and that a "further remittal [to the Appeals Committee] is thus only requested on a subsidiary basis". Lastly, he claims compensation for procedural delay and violations as well as costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable, either for failure to exhaust internal means of redress or for lack of a cause of action due to the fact that he has now retired. Subsidiarily, the complaint is unfounded. The EPO makes a counterclaim for costs considering that the complaint is an abuse of process. It also asks that the complainant bear his costs.

Complaint No. 20

The complainant contests the closure of an area of competence *per se*.

On 25 June 2014, the complainant and some of his colleagues were informed that their technical field (the area of competence G01R) was likely to be transferred from Berlin to Munich. On 1 July 2014, several staff members were informed that the area of competence G01R would gradually disappear, starting as of 1 January 2015 with a transition period of five years, and that they would be given the possibility to be transferred to Munich, or, if they preferred, the Office would try to find them a position in Berlin.

The complainant contested the decision to close the area of competence G01R by filing several requests for review challenging the decision as communicated to him orally on 25 June 2014 and confirmed on 1 July 2014, the announcement of 10 October 2014, and the decision of 28 January 2015 communicated to another staff member. All the requests were rejected. The Appeals Committee to which the matters had been referred between February and September 2015 decided to consolidate the appeals under one appeal number RI/24/15 on the grounds that the appeals concerned the same person and issue. The President notified the complainant on 10 October 2016 that, pursuant to the Appeals Committee's opinion of 11 August 2016, he had decided to reject his appeal.

In March 2017, the President informed the complainant that he had decided to withdraw his final decision and refer the appeal back to the Appeals Committee for a new examination pursuant to Judgment 3785 delivered on 30 November 2016, in which the Tribunal found that the Appeals Committee was not composed according to applicable rules. In July 2018, the Secretariat of the Appeals Committee informed the complainant that the presiding member had proposed to treat the appeal under a summary procedure. In August, the complainant raised objections concerning the decision to refer his case back to the Appeals Committee. He retired on 1 December 2018.

The Appeals Committee issued its opinion on 15 February 2019. It considered the appeal against the decision to close the area of competence G01R to be manifestly irreceivable and, therefore, treated it under a summary procedure. It held that the oral announcement of 25 June 2014 and the communication of 10 October 2014 concerning the cluster area of competence plans were of a general nature and needed further individual implementing decisions in order to have an effect on the complainant's legal situation. Hence, the contested decisions did not individually adversely affect him. It also noted that the complainant had filed an internal complaint that was still pending before the Implementation Support Committee. Consequently, his appeal was premature. The Appeals Committee recommended awarding the complainant 200 euros in moral damages for undue delay in the internal

appeal proceedings on the grounds that its duration was excessive and solely attributable to the Office, but also noted that it was unclear how much the delay had contributed to cause damage to the complainant's dignity.

By a letter of 15 April 2019, the Vice-President of Directorate-General 4, acting on delegation of authority from the President, informed the complainant of her decision to endorse the Appeals Committee's recommendation for the reasons it stated, except regarding the conclusion that the decision to close the area of competence G01R was of a general nature. In her view, the decision to close the area of competence was an "organisational decision" that was not open to challenge. With respect to the length of the internal appeal procedure, she decided to pay him an additional 100 euros to the 200 euros recommended by the Appeals Committee. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision *ab initio*, to complement the fact-finding and "taking of evidence", and to declare the closure of the area of competence G01R illegitimate *ex tunc*. He claims moral damages, including for undue delay in the examination of his appeal and procedural violations, costs, and compound interest at the rate of 8 per cent per annum on all amounts due. Subsidiarily, he asks the Tribunal to declare the Appeals Committee's opinion null and void, to declare the entire "appeals procedures" null and void *ab initio*, and to remit the "underlying appeals" to the Appeals Committee for examination by a duly composed Appeals Committee, with an order to consider the merits of the appeals. He adds that he "accepts" that his complaint is "directly and eventually finally judged" by the Tribunal and that a "further remittal [to the Appeals Committee] is thus only requested on a subsidiary basis". Lastly, he claims compensation for procedural delay and violations, as well as costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable, either for failure to exhaust internal means of redress or for lack of a cause of action. Subsidiarily, the complaint is unfounded. The EPO makes a counterclaim for costs considering that the complaint is an abuse of process. It also asks that the complainant bear his costs.

CONSIDERATIONS

1. The complainant requests the joinder of his eighteenth complaint with his tenth, nineteenth and twentieth complaints. The request to join with his tenth complaint is moot, as the latter has already been decided by the Tribunal in Judgment 4256, delivered in public on 10 February 2020. The Tribunal dismissed the tenth complaint on the ground that the impugned decision had been lawfully withdrawn by the President of the Office and the appeal had then been lawfully remitted to a newly composed Appeals Committee for examination.

The complainant's eighteenth, nineteenth and twentieth complaints are based on the same facts and address the same substantial issues. Thus, the Tribunal finds it expedient to join them, in order to render one judgment.

2. The complainant applies for oral hearings and lists witnesses. The parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. The request for oral hearings is, therefore, rejected.

3. The scope of the present complaints is limited to the pleas and claims contained therein. The Tribunal will not address the pleas and claims contained in the complainant's internal appeals and not specifically reiterated before the Tribunal. Nor will the Tribunal address claims and pleas contained in other complaints filed by the complainant. That includes those from his tenth complaint, such as the allegation that the withdrawal of the underlying decision for his tenth complaint and the sending of his appeal back for reassessment by a newly composed Appeals Committee breached his legitimate expectations. Judgment 4256 has already stated that the withdrawal decision and the referral of the case to a newly composed Appeals Committee were lawful. Moreover, there is a general principle of law that a person cannot simultaneously litigate the same issues in separate or concurrent proceedings (see Judgments 4309, consideration 5, and 4085, consideration 7).

4. The following discussion proceeds against the background already set out in the facts described above. The complainant contests on the merits the decisions of 15 April 2019, 15 May 2019, and 15 April 2019, which are respectively impugned in his eighteenth, nineteenth and twentieth complaints. His pleas may be summed up as follows:

(a) breach of due process and due diligence: the rejection of his claims is grounded on the organisational nature of the decision to close an area of competence in Berlin. However, in the complainant's view, such decision was tainted by suspicion of partiality, as the officers involved in the process of closure of the area of competence and in the adoption of the subsequent decisions to reassign the complainant and to reallocate his patent files had in the past unduly interfered in the responsibilities vested in the Examining Division to which the complainant was assigned, and committed abusive application of "coercive powers" against the complainant and other members of the Examining Division;

(b) some facts were omitted and wrong conclusions were made: the impugned decisions endorsed the opinion of the Appeals Committee which, in turn, wrongly disregarded the complainant's suspicions of partiality; and

(c) inaccuracies in the opinion of the Appeals Committee: the complainant, in order to corroborate his central plea that the decisions to close the area of competence, to reassign staff and to reallocate files were tainted by suspicion of partiality, lists a number of mistakes allegedly perpetrated by the Appeals Committee.

The Tribunal recalls its well-established case law that decisions regarding restructuring, reassignment of staff members to different posts, and changes in the duties assigned to staff members involve the exercise of a wide discretionary power, and are therefore subject to limited judicial review by the Tribunal (see Judgments 4084, consideration 13, 3488, consideration 3, and 2562, consideration 12). The Tribunal may interfere only on the limited grounds that the decision was taken *ultra vires* or shows a formal or procedural flaw or mistake of fact or law, if some material fact was overlooked, if there was misuse of authority or an obviously wrong inference from the evidence.

However, the organisation must show due regard, in both form and substance, for the dignity of the officials concerned, particularly by providing them with work of the same level as that which they performed in their previous post and matching their qualifications (see Judgments 4240, consideration 5, and 3488, consideration 3).

The complainant's allegation of partiality or at least suspected partiality seems intended to demonstrate that the impugned decisions of 15 April 2019, 15 May 2019, 15 April 2019 and the related initial decisions were tainted by misuse of authority, bias and prejudice against him. The Tribunal observes that the complainant has not provided sufficient evidence of his allegations. He makes reference to former episodes of alleged interference in his work by officers in the Examining Division. The Tribunal recalls that in a judgment regarding the issue of alleged interference in the work of the Examining Division, the Tribunal held that decisions with respect to the law and/or procedures applicable to patent applications do not "adversely affect" staff members and, thus, cannot be the subject of an internal appeal. In short, such decisions are not appealable and do not create a cause of action (see Judgment 4417, considerations 7 and 8). The Tribunal observes that the former decisions mentioned by the complainant concerned the law and/or procedures applicable to patent applications and did not "adversely affect" him, and fell within the organisational and discretionary power of the President. The adoption of such lawful decisions, on its own, cannot substantiate a suspicion of partiality, neither with regard to the restructuring decision to close an area of competence nor to the subsequent individual decision to reassign the staff member. Nor does the complainant offer the Tribunal further material in order to substantiate his suspicions of partiality. Indeed, the complainant directs his suspicion of partiality towards specific officers. However, there is no evidence that the officers who adopted the former decisions were directly involved in the decision to close the area of competence G01R in Berlin or to reassign him. As to the Principal Director, who participated in the adoption of the decisions which are the subject matter of the present complaints, the circumstance that he worked under the supervision of the Vice-President of Directorate-General 1 (who, in turn, is considered by the complainant as the main

offender in the previous disputes) does not show that he was biased against the complainant. Furthermore, there is no evidence that the decisions at stake in the present complaints disregarded the complainant's dignity or that he was not provided with work matching his qualifications and of the same level as that which he had performed before his reassignment.

5. The complainant advances a number of pleas concerned with the composition of the Appeals Committee. However, the complainant stresses that he does not want to further delay the examination of his case for reasons of the Appeals Committee's improper composition, and he does not request that the case be referred back to the EPO if the Tribunal decides the case on the merits, which it does. The complainant adds that he "mainly requests a direct Judgment by the Tribunal [...] irrespective of the [Appeals Committee's] wrong composition". He clarifies that his subsidiary requests that the case be sent back to the EPO "are thus intended for other invoked procedural violations for which the Tribunal might find it commensurate to refer the case back to the [EPO]". He adds that he "would nevertheless appreciate a respective comment" in the judgment. In addition, he requests moral damages for the procedural violations.

In brief, the complainant seeks a declaration by the Tribunal that the composition of the Appeals Committee was unlawful, and compensation for moral damages stemming from the unlawful composition of the body, but insists that the case be directly decided by the Tribunal on the merits. Firstly, it is not for the Tribunal to make declarations of law of the nature sought (see Judgments 4637, consideration 6, 4602, consideration 5, and the case law cited therein). Nor is it the Tribunal's role to merely "comment" on the lawfulness of a decision. Secondly, the Tribunal notes that since the complainant does not request that the case be sent back to the Organisation, it is not relevant to this extent to assess whether the composition of the Appeals Committee was flawed. In any event, when a complaint is judged by the Tribunal as devoid of merit – as in the present case – no useful purpose would be served by sending the case back to the Organisation (see Judgment 3890, consideration 4), not even by examining the pleas regarding the

improper composition of the Appeals Committee. However, considering that the complaints are being judged by the Tribunal as unfounded on the merits, thus confirming the opinion of the Appeals Committee as endorsed in the impugned decision, it is manifest that the outcome of the internal appeal could not have been different, even if the Appeals Committee had had a different composition (see Judgment 3890, consideration 6, "no different result for the complainant could be obtained by renewing the consultation process before the Appeals Committee"). In such a situation, there is no evidence that the complainant suffered a moral injury stemming from the composition of the Appeals Committee, even if it were proven that it was unlawful. In addition, the Tribunal notes that, by letter of 12 January 2023, the EPO informed the Tribunal that it had paid 100 euros in moral damages to several complainants, including the present complainant, following Judgment 4550; therefore, the complainant has already been awarded compensation for the unlawful composition of the Appeals Committee. For all these reasons, there is no need for the Tribunal to address these pleas on the merits, and the request for moral damages in this respect is rejected.

6. Since the complainant's pleas are unfounded, his claims to annul the impugned decisions of 15 April 2019, 15 May 2019, 15 April 2019 and the related initial decisions, should be dismissed, as well as all his claims for moral damages examined thus far.

7. The complainant claims moral damages for undue delay in the examination of his internal appeals. The Tribunal notes that the Organisation, by its 15 April 2019 decision, impugned in the complainant's twentieth complaint, has already awarded him 300 euros in moral damages for the undue delay. The complainant does not provide the Tribunal with evidence that he deserves further compensation. The Tribunal recalls that the amount of compensation for unreasonable delay will ordinarily be influenced by at least two considerations: the length of the delay and the effect of the delay. Recent case law holds that an unreasonable delay in an internal appeal is not sufficient to

award moral damages. The complainant must also articulate the adverse effects which the delay has caused (see Judgment 4563, consideration 14).

8. As all the main claims are unfounded, the complainant is not entitled to costs for the present proceedings.

9. In order to assess whether the complainant is entitled to costs of the internal proceedings, it must be recalled that Judgment 4256 found the complainant's former complaint to be moot following the withdrawal of the underlying decision, but added, in consideration 9, that the complainant might be entitled to costs in the resumed internal proceedings "[i]t is however noted that the complainants may have incurred costs in filing complaints against a decision which was presented to them as a final decision that could be impugned before the Tribunal. As the withdrawal of the impugned decisions was not caused by the complainants but by the way in which the EPO interpreted its rules, the complainants may be entitled to costs [...] Such costs should be considered in the resumed internal appeal proceedings." However, the complainant has not specified in the present complaints that he is also requesting costs for the internal proceedings. Since such costs can be awarded only under exceptional circumstances, the Tribunal will not award them in the absence of a specific request and the lack of any evidence justifying their amount.

10. Since the complaints will be dismissed on the merits, there is no need to address the receivability issues raised by the Organisation.

11. The counterclaims for costs filed by the Organisation in the three complaints are rejected. The Tribunal will avail itself of the possibility to condemn a complainant to costs only in exceptional situations. Indeed, it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of that kind. In the instant case, the complaints cannot be regarded as manifestly vexatious (see Judgment 4143, consideration 7).

DECISION

For the above reasons,

1. The complaints are dismissed.

2. The counterclaims for costs are also dismissed.

In witness of this judgment, adopted on 19 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, 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

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER