

Registry's translation, the French text alone being authoritative.

FIFTY-FIFTH ORDINARY SESSION

In re VAN DER PEET (No. 3)

(Application for review)

Judgment No. 658

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment No. 617 filed by Mr. Hendricus van der Peet on 20 July 1984 and corrected on 9 August, the reply of the European Patent Organisation (EPO) of 2 November, the applicant's rejoinder of 12 December as corrected on 18 December and the Organisation's surrejoinder of 15 February 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence;

CONSIDERATIONS:

By a judgment it delivered on 5 June 1984 the Tribunal dismissed Mr. van der Peet's complaint impugning a decision of 28 July 1983 by the President of the European Patent Office. Mr. van der Peet is seeking review of the judgment.

The Tribunal's judgments are subject to review only in exceptional cases. Failure to take account of a specific fact, a material error, failure to rule on a claim or the discovery of a new fact may be treated as admissible grounds for review; but an error of law, misappraisal of evidence, failure to take account of evidence and failure to answer a plea may not. The Tribunal has set out the rules on applications for review in several decisions -- for example Judgments 442, 604, 610 and 645 -- and need not repeat them here.

The complainant raises three issues, and the Tribunal will deal with them in the order in which they appear in his brief.

Transfer to Berlin

The parties' submissions and the judgment dwell at some length on the matter of the complainant's place of residence. He adduces no new fact he could not have relied on before judgment was delivered.

His observations on the interpretation of civil rights in the Federal Republic of Germany and in the Netherlands have no bearing on the dispute. They raise issues of law, which the Tribunal will not consider in the context of an application for review.

The complainant observes that Berlin is not part of the Federal Republic. The Tribunal might answer that that is an issue of law; but it will merely declare that there was nothing to prevent the complainant from advancing the plea in his original complaint.

Interpretation of Article 23 of the Service Regulations

The construction which the Tribunal put on Article 23 of the EPO Service Regulations is an issue of law. An appraisal of the facts which is based on legal reasoning does not afford grounds for review. In any event the Tribunal's reasoning on the issue did not afford the basis for its decision to dismiss the complaint, as indeed is clear from the inclusion of the words "en outre" in the authentic text.

The EPO's liability

The complainant alleges that the EPO was negligent or at fault in several ways: in concluding an agreement with the Netherlands Government, in violating the principle of equal treatment, and in failing to keep him properly

informed.

These are not admissible grounds for review. Some of these matters raise issues of law or call for reappraisal of the evidence; nor is there any new fact which the complainant was unable to rely on in his original complaint.

Accordingly the Tribunal will dismiss the application as irreceivable.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 18 March 1985.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner