

L. (No. 12)

v.

EPO

(Application for review)

124th Session

Judgment No. 3819

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3714 filed by Mr C. O. D. L. on 4 October 2016 and corrected on 30 November 2016;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3714, delivered in public on 6 July 2016, the Tribunal summarily dismissed the complainant's seventh complaint against the European Patent Organisation (EPO) as clearly irreceivable on the grounds that he had not exhausted the internal remedies available to him. In his application for review of that judgment, the complainant asks the Tribunal to "retract" its decision to dismiss his seventh complaint, to resume the written proceedings in that matter by forwarding the complaint to the EPO for reply and, in due course, to rule on the merits of the complaint. He asks the Tribunal to examine his seventh complaint at the same time as his eighth and ninth complaints pending before the Tribunal and, if appropriate, to join those three complaints.

2. In his submissions the complainant rightly recalls that, according to the Tribunal's case law, an application for review of one of its judgments may, exceptionally, be allowed, but only on limited grounds. Indeed, the only admissible grounds for review are a failure to take account of particular facts, a mistaken finding of fact involving no exercise of judgement, omission to rule on a claim and, lastly, the discovery of a new fact that the complainant was unable to invoke in time in the original proceedings (see Judgment 3333, under 4, and the case law cited therein).

3. After recalling the events that preceded the filing of his seventh complaint, the complainant argues that, contrary to the Tribunal's finding in Judgment 3714, he must be considered to have exhausted the internal remedies, because the decision impugned in that complaint, though implicit, was a decision taken after consultation of the Medical Committee which, according to Articles 109(3) and 110(2) of the Service Regulations, was exempted from the internal appeals procedure. Referring to Judgment 3714, under 12, he further submits that this was a case in which an exception to the requirement that internal remedies be exhausted should have been made, particularly since he was informed by a letter of 18 December 2014 that the President of the Office had decided to postpone the final decision on the issue of his invalidity pending receipt of a second medical opinion, thereby unfairly depriving him of a final decision that he could challenge. The Tribunal notes that the decision of 18 December 2014 is the subject of the complainant's eighth complaint.

4. None of the matters on which the complainant relies calls into question the finding which led the Tribunal to dismiss his seventh complaint, namely, that he had not exhausted the internal remedies available to him. That complaint was filed on the basis that the EPO had failed to take a decision, within the sixty-day time limit provided for in Article VII, paragraph 3, of the Statute of the Tribunal, on a claim that the complainant had notified to the EPO on 29 September 2014. However, the Tribunal noted in consideration 4 of its judgment that the EPO had in fact responded to that "claim" on 10 October 2014.

Accordingly, the complainant's reliance on Article VII, paragraph 3, was misplaced. Indeed, as the Tribunal recalled in consideration 7, where the Administration takes any action to deal with a claim, this step in itself constitutes "a decision upon [the] claim" within the meaning of Article VII, paragraph 3, which forestalls an implied rejection that could be referred to the Tribunal.

5. Moreover, the Tribunal concluded that the complainant had not shown that an exception to the requirement of Article VII, paragraph 1, of the Statute that internal remedies be exhausted was justified in this case, notwithstanding the decision conveyed to him on 18 December 2014, which the complainant had forwarded to the Tribunal. The complainant has raised no new argument in the present application that would lead the Tribunal to depart from that conclusion.

6. The complaint is therefore devoid of merit and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

7. In these circumstances, the complainant's request for joinder of his seventh complaint with two other pending complaints must obviously be rejected.

DECISION

For the above reasons,
The application for review is dismissed.

In witness of this judgment, adopted on 16 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ