

T. (No. 40)

v.

EPO

125th Session

Judgment No. 3955

THE ADMINISTRATIVE TRIBUNAL,

Considering the fortieth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 20 May 2017 and corrected on 29 June 2017;

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 2015 the complainant, an official of the European Patent Office, the EPO's secretariat, submitted to the Administrative Council a request for review of the decision of the Administrative Council CA/D 10/14. At its 144th meeting on 24 and 25 June 2015, the Administrative Council decided to dismiss this request for review as manifestly irreceivable.

2. In Judgments 3700 and 3796 delivered in public on 6 July 2016 and 30 November 2016, the Tribunal stated that the Administrative Council was not the "competent authority", within the meaning of Title VIII of the Service Regulations for permanent employees of the

Office concerning settlement of disputes, to examine a request for review filed by a staff member appointed by the President.

3. On 22 February 2017 the complainant was informed that the decision which the Administrative Council had taken at its 144th meeting had been withdrawn, as it fell under the scope of Judgment 3796. Therefore, his request for review of decision CA/D 10/14 had been referred for consideration to the President, who was the competent appointing authority. He was also informed that the Administration acknowledged receipt of his request for review on 13 February 2017 and that, in the exceptional case he would not receive a decision within two months, he could challenge, “depending on the specific case”, the implicit decision of rejection of his request for review, in accordance with Articles 110 and 113 of the Service Regulations.

4. On 20 May 2017 the complainant filed his fortieth complaint. In his complaint form, he filled in point 3(b), indicating that the Administration had failed to take a decision within the time limit set in Article VII, paragraph 3, of the Tribunal’s Statute, on a claim which he had notified to the EPO on 13 February 2017.

5. The complainant’s approach is mistaken. The possibility of filing a complaint against an implied rejection is governed solely by the provisions of Article VII, paragraph 3, of the Statute, which states that an official may file such a complaint “[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it”. However, firm precedent has it that when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes “a decision upon [the] claim” within the meaning of these provisions, which forestalls an implied rejection which could be referred to the Tribunal (see, on these points, Judgments 532, 762, 786, 2681 or 3034).

Given that the decision which the Administrative Council had taken on the complainant's request for review was withdrawn and that the complainant was informed on 22 February 2017 that the said request for review had been referred to the President, he cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.

6. Furthermore, the Tribunal notes that Article 110(1) of the Service Regulations provides that "[w]here the internal appeal is against an implied decision of rejection within the meaning of Article 107, paragraph 3, or Article 109, paragraph 7, [the time limit] shall start to run on the date of expiry of the period for reply". But the complainant did not lodge an internal appeal before the Appeals Committee within the prescribed time limits.

7. As the complainant has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Tribunal's Statute, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

8. In the circumstances, the request for joinder of the present complaint with his thirty-second complaint is rejected.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ