

117th Session

Judgment No. 3326

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 20 May 2011;

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 his sixth complaint before the Tribunal, the complainant, a French national who joined the European Patent Office, the EPO's secretariat, in November 1987 as an examiner, impugns the implied decision of the President of the Office not to respond to his letter dated 24 December 2010.

2. On 19 August 2009, the complainant was assigned a French patent application file and was asked to draw up a search report and a subsequent preliminary examination report. The complainant issued the search report on 21 August 2009, followed by the preliminary examination report on 24 August 2009. He issued a second preliminary examination report on 9 October 2009 at the request of his Principal

Director who was not satisfied with the first version. The complainant sent a letter to the Principal Director on 15 October 2009 explaining his preliminary examination reports and requesting responses to his questions regarding the French application file. He sent another letter on 30 October 2009, having received no response to his first letter, explaining the urgency of a reply to his questions. The complainant received a response dated 3 November 2009 from his Director, on behalf of the Principal Director, acknowledging the complainant's concerns regarding the timeliness of the service the EPO provides and stating that it was imperative they proceed with the file in question "with the greatest [...] priority". He went on to acknowledge the complainant's repeated opinion that the Organisation issues reports concerning patent applications that lack some clarity, stating that "a speedy, unconsidered answer to this issue c[ould] not be provided without significant and possibly lengthy consultation". With regard to the issue of timeliness, he requested the complainant "to issue the report as prescribed in the Internal Instructions without recourse to the use of national patent law" as he had done in the past. He went on to state that he would send a note to the Chairman of the Practice and Procedure Committee outlining the complainant's concerns and requesting comments.

3. On 17 November 2009, the complainant sent a letter to his Director, copied to his Principal Director, another Director, and to the Vice-President of Directorate-General 1 (DG1). In this letter he reiterated his concerns and emphasized that it was urgent that he receive a response. The complainant's Principal Director responded in an e-mail dated 19 November 2009, urging the complainant to follow the Internal Instructions as previously requested by the Director. He also requested the complainant to stop copying his letters (regarding patent applications) to the Vice-President of DG1, and stated that if the complainant did not follow the Internal Instructions he would consider it to be gross professional negligence. In a meeting on 1 December 2009, the Principal Director gave the complainant two, signed, written confirmations of the aforementioned e-mail. The complainant sent another letter on 10 December 2009, reiterating his

requests for information and requesting the legal basis for the order prohibiting him from contacting the Vice-President of DG1 and the order to follow the Internal Instructions.

4. The complainant's Principal Director reassigned the contested French application file to another patent examiner on 18 December 2009. The complainant sent another letter on 19 August 2010, to his Principal Director, reiterating his previous requests. By an e-mail dated 7 September 2010, the Principal Director confirmed his position as written in the e-mail of 19 November 2009 and subsequently delivered in person to the complainant at the meeting of 1 December 2009. He also stated that the complainant must stop contacting other Directors, the Vice-President of DG1 and the President with notes regarding the French patent application file. He went on to state that the complainant's performance was clearly insufficient and that drastic improvements had to be made.

5. The complainant sent a letter to the Vice-President of DG1 on 19 October 2010, asking again the same questions as previously asked in his other notes and letters. He also requested him to justify or cancel the orders given by his Principal Director in the e-mails of 19 November 2009 and 7 September 2010. On 24 December 2010, the complainant reiterated his requests in a letter to the President. Having received no response, the complainant filed the present complaint with the Tribunal on 20 May 2011.

6. As provided under Articles 107 to 109 of the Service Regulations for Permanent Employees of the EPO, decisions shall be deemed final and may be impugned before the Tribunal when all the internal means of redress have been exhausted.

7. The Tribunal notes that the complainant did not request a review of the President's implied rejection of his letter of 24 December 2010, nor did he file an internal appeal against the implied rejection, nor did he receive a final decision regarding his grievance prior to bringing his complaint to the Tribunal. As such, the impugned

decision is not a final one in accordance with Article VII of the Statute of the Tribunal. The complaint is therefore clearly irreceivable for failure to exhaust all internal means of redress and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

GIUSEPPE BARBAGALLO
MICHAEL F. MOORE
HUGH A. RAWLINS
DRAŽEN PETROVIĆ