

**S. (No. 5)**

*v.*

**EPO**

**127th Session**

**Judgment No. 4131**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr J. A. S. against the European Patent Organisation (EPO) on 14 May 2018;

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. The background to this complaint is set out in Judgment 3535, delivered in public on 30 June 2015. For present purposes, it is sufficient to note that by a letter of 16 January 2012 the complainant was informed that, following a review by the Promotion Board, his promotion to grade A4 would take effect on 1 March 2007, and not on 1 April 2008, as had initially been determined. The complainant's internal appeal against that decision was dismissed by the President of the European Patent Office, the EPO's secretariat, on 8 September 2016. The complainant then filed his third complaint, impugning the decision of 8 September 2016.

2. On 30 November 2016, while that complaint was still pending, the Tribunal delivered in public Judgment 3785, concerning another EPO employee, in which it held that the internal appeal

proceedings were flawed because the composition of the Appeals Committee was unlawful. Following the public delivery of that judgment, the President of the Office decided to withdraw numerous decisions that had been taken after internal appeal proceedings tainted with the same flaw. Thus, the complainant was notified on 1 March 2017 that the President had decided to withdraw the above-mentioned decision of 8 September 2016 and to refer his appeal back to a properly composed Appeals Committee. The complainant was invited to withdraw his third complaint accordingly.

3. The complainant's request for review of the decision of 1 March 2017 was rejected by the President as irreceivable and the matter was then referred to the Appeals Committee. In an opinion of 6 March 2018, the Appeals Committee, properly constituted, found that the appeal was manifestly irreceivable, since it considered that the referral of the case to the Appeals Committee by the President was not an "act adversely affecting" the complainant. The Principal Director of Human Resources, acting by delegated power of the President, endorsed that opinion and rejected the appeal by a decision of 30 April 2018. The complainant impugns the decision of 30 April in his fifth complaint before the Tribunal.

4. The complaint is irreceivable. Although the complainant has formally exhausted the internal means of redress available to him, his internal appeal was directed against what was merely a step in the process which would culminate in a final decision on his appeal. According to the case law, the steps leading to a final decision can be challenged before the Tribunal only in the context of a complaint impugning that final decision (see, for example, Judgment 3961, consideration 4, and the case law cited therein; Judgment 3958, consideration 15; and Judgment 3860, considerations 5 and 6).

5. The Tribunal notes that, in his internal appeal, the complainant argued that the referral to the Appeals Committee had no basis in law. However, the President of the Office had no choice but to refer the case back to the Appeals Committee in light of the finding made by the

Tribunal in Judgment 3785, which made it clear that his final decision could not lawfully be based on the opinion of an incorrectly composed Appeals Committee. Judgment 3785 therefore provided a valid legal basis for the decision of 30 April 2018.

6. In the circumstances outlined above, the EPO rightly rejected the complainant's appeal. It follows that the 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.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

YVES KREINS

DRAŽEN PETROVIĆ