

**W. (Nos. 15 and 17)**

**v.**

**EPO**

**120th Session**

**Judgment No. 3540**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifteenth complaint filed by Mr J. M. W. against the European Patent Organisation (EPO) on 23 August 2011 and corrected on 6 October 2011, the EPO's reply dated 12 January 2012 and the complainant's letter of 25 January 2012 informing the Registrar that he did not wish to file a rejoinder;

Considering the seventeenth complaint filed by Mr W. against the EPO on 27 February 2012, the EPO's reply dated 4 June and the complainant's letter of 7 August 2012 informing the Registrar that he did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant, who received an invalidity pension, contests the Administrative Council decision CA/D 30/07 which inter alia replaced the invalidity pension by the invalidity allowance.

Pursuant to the aforementioned decision the rules (including Article 62 of the Service Regulations for Permanent Employees of the Office and Article 42 of the Pension Scheme Regulations) governing

invalidity pensions were amended with effect from 1 January 2008. As from that date, employees who retired on grounds of invalidity before having reached the statutory retirement age of 65 would not become pensioners immediately but would be considered as employees with non-active status. As such, they would receive an invalidity allowance instead of an invalidity pension and, except where their invalidity was due to an occupational disease, they would continue to contribute to the pension fund. When they reached the age of 65, their contributions to the pension fund would cease and they would begin to draw a retirement pension. Article 29(a) of the decision provides for a transitional measure for permanent employees who are under 65 years and in receipt of an invalidity pension at the time of entry into force of the decision, and who will be subject to the invalidity allowance regulations laid down in Article 62a of the Service Regulations. It provides that the benefits paid until 31 December 2007 to them, after deduction of the theoretical national tax due on the pension, calculated according to Article 42(3) of the Pension Scheme Regulations, shall be guaranteed until the recipient dies in those cases in which the application of the regulations which entered into force on 1 January 2008 would lead to an employee receiving lower benefits. On 14 January 2008 the EPO informed the complainant, who had been receiving an invalidity pension since 1 June 2001, of the legal changes introduced by decision CA/D 30/07. At that time his place of residence was the Isle of Man.

On 10 April 2008 he wrote to the President of the Office contesting decision CA/D 30/07, in particular the transitional measure. He alleged inter alia violation of the principles of acquired rights and of “equity” given that he had suffered a financial loss pursuant to its entry into force. On 18 May he wrote again to the President informing her that he was modifying his claims following the decision of the authorities of the Isle of Man to accept the EPO’s request to exempt the invalidity allowance from taxation. He added that he presumed that his appeal would be forwarded to the Appeals Committee of the Administrative Council.

In the meantime, on 12 April 2008, he wrote another letter to the President against the Office's decision to reduce the level of his "invalidity benefit". He requested that his "invalidity benefit be set at a level no less than that he would have received had he still been receiving an invalidity pension". He further wrote to the President on 21 April 2008 requesting that the invalidity benefits he received be converted back into an invalidity pension as from 1 January 2008, the amount of which should be determined in accordance with the Pension Scheme Regulations in force prior to 1 January 2008. He asserted that his request was admissible because he had filed it within three months of receipt of his pay slips for the months of January, February and March 2008. He alleged *inter alia* that the transitional measure introduced by decision CA/D 30/07 was flawed as it was amended after the General Advisory Committee (GAC) consultation had taken place. He added that if his request could not be granted, his letter should be considered as an internal appeal.

He was informed by a letter of 9 June that the President had reviewed his requests for review of 10 April, 12 April, 21 April and 18 May and had decided to reject them. The matter was therefore referred to the Internal Appeals Committee (IAC), under the reference RI/65/08, for one single opinion. In mid-July the complainant wrote to the chairman of the IAC requesting that the appeal he had initiated on 10 April, be forwarded to the Appeals Committee of the Administrative Council as it was directed against decision CA/D 30/07. The President submitted the appeal to the Administrative Council in November 2008 stressing that the complainant had three other appeals pending with her on the same subject. She therefore asked the Council to decline competence and forward the appeal to her. The Administrative Council did so in December 2008.

The IAC heard the complainant and then issued its opinion on 28 March 2011. It held that it was not competent to amend Article 62a(7) of the Service Regulations to ensure, as requested by the complainant during the internal appeals proceedings, that recipients of an invalidity pension on 31 December 2007 would not have to pay contributions to the pension scheme; nor was it competent to amend the transitional

measure so as to ensure that the level of benefits formerly paid as an invalidity pension be guaranteed. The IAC explained that it could examine the validity of decision CA/D 30/07 only insofar as it concerned the complainant. It found no breach of the complainant's acquired rights and no violation of the principle of equal treatment. In its view, the liability to pay pension contributions under the invalidity allowance was lawful. However, it held that the transitional measure set out in decision CA/D 30/07 must be considered flawed as the GAC had not been consulted on the latest version of the text. It therefore unanimously recommended that the provision referring to the transitional measure, i.e. the guarantee clause, be revoked and replaced by another "guarantee clause" to be adopted in a proper manner. Both the majority and the minority recommended awarding the complainant moral damages for undue delay and reimbursing his procedural costs; there was a small difference in the amount proposed by each.

In the meantime, on 1 January 2011, the complainant retired. Later that year, on 23 August, he filed his fifteenth complaint with the Tribunal, impugning the implied rejection of the appeal he had filed on 10 April 2008. He asks the Tribunal to order the EPO to reimburse the pension contributions he had paid from 1 January 2008 to 31 December 2010 with interest, or to order the setting aside of the transitional measure included in decision CA/D 30/07 and to reimburse him the amount corresponding to the difference between the invalidity pension and the invalidity allowance together with interest. He also seeks the quashing of the decision of the Administrative Council to replace the invalidity pension by an invalidity allowance at least for those formerly in receipt of an invalidity pension, and the award of compensation in an amount equivalent to the difference between the benefits paid under the invalidity pension and the invalidity allowance together with interest. Further he claims 15,100 euros in moral damages and 1,000 euros in costs.

By a letter of 5 December 2011 he was informed of the President's decision to resubmit the guarantee clause to the GAC and then to the Administrative Council. The President had also decided to award him 500 euros for the delay in the internal appeals proceedings

and to reimburse his reasonable costs. But she had decided to reject his claim for moral damages as unfounded given that he had not shown that he had suffered any loss as a result of the flawed statutory consultation. His other claims were rejected as unfounded in accordance with the unanimous decision of the Administrative Council.

The complainant filed his seventeenth complaint with the Tribunal on 27 February 2012 impugning that decision. He requested the Tribunal to order the EPO to reimburse the pension contributions he paid from 1 January 2008 to 31 December 2010 with interest, or to pay him the difference between the benefits due to him under the invalidity pension and the invalidity allowance for the period 1 January 2008 to 31 December 2010 with interest; or to pay him the difference between the benefits due to him under the invalidity pension and the invalidity allowance for January 2008, and for a further period of up to ten months together with interest. He also asks the Tribunal to order that the President's decision to reinstate the transitional measure be quashed or to rule that its retroactive reintroduction is unlawful. He further claims moral damages and costs.

The EPO asks the Tribunal to dismiss the fifteenth complaint as unfounded. Concerning the seventeenth complaint, the EPO argues that it is irreceivable with respect to the claim for reimbursement of the difference between the invalidity pension and the invalidity allowance for January 2008 and ten additional months as the complainant has failed to exhaust internal means of redress in that respect. The EPO considers that this complaint is otherwise unfounded.

## CONSIDERATIONS

1. The complainant states that both of these complaints are based on the same internal appeal: EPO internal appeal RI/65/08. In his fifteenth complaint he challenges the implied rejection of his internal appeal in which he sought to contest the decision of the Administrative Council (AC) to approve changes that were made

to the EPO's Pension Scheme Regulations by decision CA/D 30/07 of 14 December 2007. He filed this complaint because the President's final decision on the recommendations of the IAC was delayed. He filed the seventeenth complaint against the final decision that the President eventually gave on the recommendations of the IAC on the same internal appeal. The complainant relies on the same principles and seeks similar redress in both complaints.

2. The EPO has requested the joinder of these complaints. It is plain that they raise similar issues; are related to the same subject matter; are based on virtually the same underlying facts; rely on similar arguments; seek similar redress and are interdependent. The Tribunal therefore finds it appropriate that they be joined to form the subject of a single judgment.

3. It is observed that there are instances in which the complainant seems to challenge the lawfulness of a decision that is of general application. However, he was only entitled to challenge that decision in the context of a complaint insofar as the decision applies to him. He has no standing to challenge a general decision (see, for example, Judgment 3291, under 8) and his complaints will be determined on that basis.

4. The complainant raises two procedural issues in his fifteenth complaint. He argues that one of his internal appeals should also have been considered by the Appeals Committee of the AC and that the AC wrongly declined competence to consider it. However, this procedural ground is unfounded inasmuch as the IAC was also competent to assess the legality of decision CA/D 30/07 (see Judgment 2793, under 13) and correctly and conveniently dealt with a number of the complainant's internal appeals in the interest of efficiency as they were intricately interrelated.

5. In the second place, the complainant seeks to challenge the implied rejection of his appeal on the ground that the procedures leading to the adoption of decision CA/D 30/07 were flawed particularly

because there was no consultation with various interested entities prior to adoption. He contends that the Office should have consulted all of the recipients of invalidity pensions, the Staff Committee and the relevant national tax offices before it amended the invalidity scheme. However, Article 38(3) of the Service Regulations requires mandatory consultation only with the GAC prior to such amendments. In any event, the GAC is constituted of equal numbers of persons appointed by the President and by the Staff Committee, which represents the interests of all staff members, including the invalidity pensioners. It is noteworthy, for example, that the IAC found that the guarantee clause, that was passed by the AC's decision CA/D 30/07 under Part VII concerning transitional measures, was flawed because it was not submitted to the GAC for final consultation and recommended that it should be revoked. It also recommended that a suitable guarantee clause be resubmitted to the GAC for retrospective approval. The challenge to this decision will be considered later in this Judgment.

6. The other four issues that the complainant raises in his fifteenth complaint are concerned with arguments he had raised in his internal appeal which the IAC recommended be dismissed. In summary, the complainant challenges the decision of the AC to cause decision CA/D 30/07 to be applied to him (1) by Article 5 of that document, which was enacted as Article 62a(7) of the Service Regulations to deduct a pension contribution from his new invalidity allowance; (2) by Article 29(a) of decision CA/D 30/07, which was enacted as a footnote to Article 62a of the Service Regulations, and which reduced the actual amount of his invalidity allowance and thus the benefits paid to him in that respect from 1 January 2008 to 31 December 2010; (3) by subjecting the actual invalidity benefits paid to him until December 2007 to a deduction of the theoretical national tax due on the pension, calculated in accordance with Article 42(3) of the Pension Scheme Regulations when determining the level of the guaranteed benefits for the invalidity allowance; and (4) when by Article 5 of decision CA/D 30/07, which was enacted as Article 62a(1) of the Service Regulations, the invalidity pension was replaced with the invalidity allowance.

7. The complainant challenges these same four decisions in his seventeenth complaint against the subsequent final decision by the President, with one additional challenge. In effect, the complainant duplicated his complaints in relation to the four common decisions which he seeks to challenge and for which he seeks essentially the same reliefs. In the additional challenge, in his seventeenth complaint, the complainant states that by accepting paragraph 60 of the IAC's recommendations on his internal appeal, but ignoring paragraphs 61 to 63, the President, in his final decision, caused an unlawfully amended guarantee clause to be submitted to the GAC and thereafter to the AC for re-enactment with retroactive effect.

8. It is observed that at the time when he filed his fifteenth complaint, there was delay in the decision by the President on the IAC's recommendations. However, there was no indication that his internal appeal process had been paralyzed to justify his challenge to the decisions of the AC on the basis of the IAC's opinion, as he purportedly did. The result was that his internal means of redress had not been exhausted. When the recommendations of the IAC were not endorsed by the President in the impugned decision, the complainant should properly have withdrawn those four issues from his fifteenth complaint instead of duplicating them in his seventeenth complaint. In any event, his challenges will be adequately addressed in determining the claims made in the seventeenth complaint.

9. The challenge to these decisions and the substantive orders which the complainant seeks are essentially intended to put him into the same financial position that he would have been in under the prior invalidity pension scheme which was replaced with effect from 1 January 2008. He contends that the changes that he complains of breached the principles of acquired right, equality of treatment, equity, good faith, legitimate expectation, natural law, *reformatio in peius*, non-retroactivity of the decision concerning the amended guarantee and were in breach of the EPO's duty of care. He also alleges delay in the internal appeal process.

10. In seeking to challenge decision CA/D 30/07 on the principles of acquired right and legitimate expectation, the complainant asserts that these principles entitle him not to pay pension contributions or at least to continue to receive the same level of benefits he received on the invalidity pension. He insists that by deducting pension contributions from the invalidity allowance, and by changing the original guarantee approved by the GAC to include the deduction of the theoretical national tax due on the pension, the EPO has ensured that in virtually all cases the invalidity allowance provides lower benefits than the invalidity pension. He further argues that the deduction of the theoretical national tax due from the invalidity allowance, when determining the application of the guarantee, is disadvantageous as it does not take into account any tax relief available when national tax is paid. He states that he was not informed that he could have opted to become a “normal pensioner”, who did not have to pay pension contributions, at the time when the change was introduced.

11. In Judgment 3375, the Tribunal considered whether a complainant, who was also required to pay pension contributions towards his EPO invalidity allowance which replaced the invalidity pension on 1 January 2008, under the same decision CA/D 30/07, had an acquired right to a non-deductible invalidity pension. The Tribunal found that the complainant did not have such an acquired right. In that case, the Tribunal stated as follows in considerations 8 and 9:

“8. The following statement by the Tribunal in Judgment 1392, under 34, in which the EPO was the defendant, presents a helpful perspective from which to consider the question whether the complainant had an acquired right in the application of the pre-2008 invalidity provisions:

‘whereas [the] right to a pension is no doubt inviolable, a pension contribution is by its very nature subject to variation [...]. Far from infringing any acquired right a rise in contribution that is warranted for sound actuarial reasons [...] actually affords the best safeguard against the threat that lack of foresight may pose to the future value of pension benefits.’

9. This statement recognizes, in the first place, that it is within an organisation’s discretion to amend its Service Regulations. Article 33(2)(b) and (c) of the European Patent Convention, the EPO’s founding Treaty, specifically permits it to amend its Service Regulations and its Pension Scheme

Regulations. In accepting this, however, the Tribunal stresses that the EPO should strike a balance between the mutual obligations of the Organisation and its employees and the main or fundamental conditions of its employees' appointment (see Judgment 832, under 15)."

12. In considerations 11 and 12, the Tribunal noted the complainant's assertion that he had an acquired right under the pre-2008 invalidity pension provisions because he could reasonably be expected to benefit from the prior scheme as it was a factor in his acceptance of employment with the EPO. The Tribunal restated that the main question for this determination was whether the new scheme altered the complainant's terms of employment in a manner that was fundamental, within the meaning of Judgment 832. It was established, in consideration 14 of Judgment 832, that this depends upon: (1) the nature of the term that is altered; (2) the reason for the change; and (3) the consequences of allowing or disallowing an acquired right. The Tribunal held, in consideration 13 of Judgment 3375, that by its nature as a remote and contingent right, the benefit to an invalidity pension arises only under conditions of invalidity to cover a risk that rarely occurs. This, according to the Tribunal, is not a fundamental term which could be said to have reasonably induced the complainant or any staff member of the EPO to enter into the contract of employment with the Organisation so as to preclude the Organisation from altering its terms as it did by the new arrangements. Judgment 2682, consideration 6, was cited in authority.

13. Considerations 14 to 18 of Judgment 3375 show that on the evidence that it accepted, the Tribunal expressed satisfaction that the change in the invalidity benefits to include the payment of the pension contribution was made on sound actuarial studies and management considerations, which ultimately provided the bases for the decisions of the AC of 14 December 2007, that are contained in decision CA/D 30/07, for the implementation of Article 62a of the Service Regulations. The Tribunal was satisfied, on the evidence, that the change was intended to ensure the long-term viability of the social security cover that is itself an essential and fundamental term or condition of employment of the complainant and other employees

of the EPO, in the longer term interest of staff members. It was also in the interest of the EPO's obligation to continue to provide invalidity allowances to its employees. It was further found that the change to the invalidity allowance left the EPO's pension scheme, including the invalidity aspect, basically in the form in which it was known and administered. This seemed to have achieved the balance which the Tribunal's case law requires where such changes are made. On the one hand, the overall intention was to maintain certainty and continuity in the EPO's pension scheme, in the interests of the staff who subscribed to it on joining the Organisation. On the other hand, it was to support the EPO's interest to maintain the viability of its pension scheme as adjustments are made to changing needs. The Tribunal found that the consequences of paying the contribution to the pension scheme are not so significant or adverse to the complainant to warrant its discontinuance.

14. Against this background, the complainant submits that since less than 62 (20 per cent) out of 308 invalidity pensioners exercised their right to become "normal pensioners", the deduction of the pension contributions meets the criterion of being an altered fundamental term of appointment. He states that, furthermore, invalidity pensioners who, as former employees, were not paying pension contributions also have a legitimate expectation for the prior invalidity pension system to continue. He insists that they therefore have an acquired right or a legitimate expectation, or both, not to pay pension contributions whilst in receipt of an invalidity allowance. On these bases he submits that he is entitled to the repayment of the contributions he paid between 1 January 2008 and 31 December 2010, with interest.

The Tribunal finds that the personal consequences to the complainant of paying the pension contribution were not so significant or adverse to him to warrant its discontinuance. He had paid a contribution on the invalidity allowance of 643.89 euros. This was deducted from his first invalidity allowance in February 2008, and continuing. It was 9.1 per cent of the 7,075.73 euros he received as an invalidity allowance. He had also received a substantial lump-sum payment and his invalidity allowance was not subject to tax in the Isle

of Man, as it was the case from the outset for those residing in Austria. His plea that the deduction of a pension contribution from his invalidity allowance, which Article 5 of decision CA/D 30/07, enacted by Article 62a of the Service Regulations permitted, breached his acquired right is therefore unfounded.

15. The plea of breach of acquired right is unfounded in the present case with respect to the complainant's claims 1, 2 and 4 based on the reasoning and finding in Judgment 3375. As far as personal consequences are concerned, it appears that the complainant suffered no financial loss between his invalidity pension and his invalidity allowance. The EPO has provided figures that show that he was due to receive slightly more under the latter – 82,912.38 euros as against 80,908.30 euros under the theoretical invalidity pension. The complainant has not controverted this. Moreover, the Tribunal notes that the Isle of Man subsequently recognized the tax exemption as Austria had done from the outset so that the complainant benefits from a tax free invalidity allowance. On the same bases, the complainant's plea on the basis of legitimate expectation is also unfounded in relation to pleas 1, 2 and 4.

16. With regard to his third claim, the complainant states that he has suffered loss as a result of the notional theoretical national income tax. His case is that he was entitled to tax relief on his mortgage payments of up to 15,000 "GDP" under the Isle of Man's tax regime. In the tax year 2008/2009 his interest for this amounted to 10,038.47 "GDP". This, according to him, was not taken into account when calculating the "guaranteed benefits" under Article 29(a) of decision CA/D 30/07. He states the result is that the EPO's calculation of the theoretical national tax, pursuant to Article 42(3) of the Pension Scheme Regulations, is not equivalent to the actual level of the Manx national taxation. The complainant insists that the EPO failed to ensure that the tax benefits that he received until December 2007 were maintained under Article 29(a) of decision CA/D 30/07. According to the complainant, he was entitled to 1,807 pounds (151 pounds per month) tax relief at 18 per cent on his mortgage interest on 10,038 pounds,

but that if this was deducted from the notional theoretical income tax he would have been entitled to receive 4,760.51 pounds under the guarantee rather than 4,756.71 pounds under the invalidity allowance. This is an immaterial difference and does not evidence a failure to strike the balance referred to in consideration 13, above. The complainant's third claim is unfounded on the pleas of breach of acquired right and legitimate expectation, which claim would accordingly be dismissed.

17. The complainant's fifth claim is based on the IAC's recommendation that the President submitted an unlawfully amended guarantee clause to the AC for approval and for enactment with retroactive effect. In its report, the IAC stated that there was a procedural error in the consultation process prior to the enactment of the amendments that provided for the invalidity allowance. According to the IAC, the default was only because the GAC had not been consulted in respect of the guarantee. The IAC advised the President to subsequently submit a new draft decision on that matter to the AC for adoption to take effect as of the date when the previous regulation came into force. The complainant insists that this was wrong because the new draft decision must take into account the principle of *reformatio in peius*, which by virtue of Judgment 357, consideration 3, requires that he must not suffer any negative impact compared with the relevant legally valid Regulation that was in force prior to 1 January 2008. He also insists that this recommendation failed to take into account the principle of non-retroactivity under which retrospective change of a rule that causes detriment to a staff member (Judgment 2963, consideration 9) is enforceable only from the date on which notice is given to the staff member to whom it applies (Judgment 1531, consideration 8). Accordingly, he submits that the footnote "Invalidity Allowance (a)" to Article 62a of the Service Regulations should only be retrospectively amended with effect from 1 January 2008 so as to guarantee that the benefits payable to him under the invalidity pension were maintained.

18. The complainant further argues that he was notified of the change in his status on 14 January 2008, when the change was already in effect from 1 January 2008. He asserts that he is therefore entitled to the repayment, with interest, of the difference between the benefits paid monthly to him under the invalidity pension and those paid under the invalidity allowance for the late notice, as well as a payment to allow for the necessary financial adjustment due to the loss of tax relief and for negotiations with the authorities of the Isle of Man. He also contends that an additional period of notice was required. He provides no authority for this assertion, but states that by analogy with a termination of appointment under Article 52(3) of the Service Regulations, the notice period should have been ten months from the first day of the month following his notification of the decision. This, he states, means that he is to be repaid, with interest, the difference between the amount he would have received as invalidity pension for the month of January 2008 and the amount he was paid as invalidity allowance for that month, as well as for ten subsequent months.

19. In the first place, the Article that he cites as analogical authority for these assertions has no relevance to this matter. In the second place, the transitional measure was adopted by the AC to assist those who formerly received invalidity pensions when the change took effect to ensure the continued parity in their income levels. The complainant has not provided any evidence that he was adversely affected or suffered financial detriment or loss as a result of the change. In the premises, this complaint is unfounded on the grounds that the EPO breached the principles of *reformatio in peius* and the non-retroactive application of the provisions that amended the invalidity pension scheme to provide for the payment of invalidity allowance.

The complaint is also unfounded on the ground that the EPO breached the principle of natural law. According to the complainant, this principle precludes the EPO from providing for the deduction of the notional national tax when determining the guaranteed level of invalidity benefits. However, he provided no applicable authority for the application of this principle.

20. The complainant asserts that the EPO breached the principle of equal treatment. He states that this principle entitles him to receive the same level of benefits as he did under the invalidity pension, as other pensioners who resided in Austria received because the notional theoretical income tax does not apply to them. The complainant resiled from this assertion when he states, in his complaint, that as the invalidity allowance is not subsequently subjected to national taxation in either Austria or the Isle of Man, he was now not adversely affected “and the principle of equal treatment therefore applies”. He has not controverted the EPO’s statement that he suffered no loss under this head. In any event, invalidity pensioners in those countries that did not exempt the invalidity allowance from national income tax were entitled to a tax adjustment provided by the EPO. His complaint is therefore unfounded on the ground of breach of the principle of equality. For the same reasons his complaint is also unfounded on the ground of breach of the principle of equity. Under this principle he argues that he was entitled not to be left in a more adverse position, financially, than he was in before the change from the invalidity pension to invalidity allowance. There is no evidence that the change left him in a more adverse financial position.

21. With regard to the claim that the EPO breached its duty of care to him, the complainant states that as an invalidity pensioner who suffered an incapacity, the Administration had a duty to ensure that he was fairly treated and not inconvenienced or disadvantaged in any way by changes to the payment of his benefits, but did not do so. The Tribunal observes that the changes to the pension scheme that brought in the payment of the invalidity allowance were introduced on sound actuarial considerations that were intended to set the EPO’s pension scheme on a secure footing for the longer term benefit of the EPO and of staff members.

22. The evidence also shows that the EPO took various measures to minimize any adverse impact that the change may have had on the complainant and other invalidity pensioners. These included its attempts to have the invalidity allowance exempted from national tax

and the provision of tax adjustment where that was not done. Given, additionally that the complainant suffered little or no financial loss by the change to the invalidity allowance, his complaint is also unfounded on the ground that the EPO breached its duty of care to him. It is also unfounded on the ground that the EPO breached the principle of good faith and trust, which the complainant states required the EPO to be honest and straightforward in its dealings with him. The complainant provides no evidence that supports this claim. Neither has he substantiated the claim, which he made in both complaints, for 2,000 euros moral damages for distress and inconvenience, which he states were caused to him by the change from invalidity pension to invalidity allowance.

23. In the foregoing premises, all of the grounds of the complainant's challenge raised in his fifteenth and seventeenth complaints and the consequential reliefs or remedies that he seeks will be dismissed, with the exception of his claim of delay. It is noted that the EPO accepted the recommendation of the majority of the IAC's members to pay the complainant 500 euros for delay in the internal appeal proceedings. He is entitled to an additional 750 euros in moral damages for the President's delay in providing the impugned decision after receiving the IAC's opinion. He is also entitled to 750 euros costs.

#### DECISION

For the above reasons,

1. The EPO shall pay the complainant 750 euros in moral damages for delay in the provision of the impugned decision.
2. The EPO shall pay the complainant 750 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 8 May 2015, 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 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ