

119th Session

Judgment No. 3463

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms S. R. (her fifth), Mr I. H. T. (his twenty-sixth) and Mr P. O. A. T. (his thirteenth) on 15 July 2013 against the European Patent Organisation (EPO);

Considering the complaints filed against the EPO by Mr M. S. (his third), Mr W. M. (his ninth), Mr P. K., Mr S. E. (his second) and Mr P. B. (his second) on 17 August 2013;

Considering the complaint filed against the EPO by Ms M. W. (her eleventh) on 2 September 2013;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 25 October 2007 the Administrative Council adopted decision CA/D 34/07, amending Articles 3, 4, 7, 29, 41 and 49 of the Service Regulations for permanent employees of the European Patent Office and Annexes I and II thereto. In the main, the amended Regulations distinguished between an “appointment” and a “promotion”, in a manner that permitted employees within the Office to be appointed, on application, to posts of a grade that they may not reach by normal internal promotions.

2. On 25 February 2013, acting in their capacity as staff representatives, the complainants submitted requests for review to the

Chairman of the Administrative Council under Article 109 of the Service Regulations, challenging the lawfulness of decision CA/D 34/07. In parallel, they also filed requests for review with the President of the Office, challenging three administrative decisions which, according to the complainants, had been taken on the basis of decision CA/D 34/07.

3. In the complaints presently before the Tribunal, they seek to impugn an implied decision to reject the requests for review that they filed with the Chairman of the Administrative Council. Specifically, they assert that they did not receive a decision on those requests for review within 60 days of the date on which they were submitted to the Chairman of the Administrative Council and that, accordingly, they are entitled under Article VII, paragraph 3, of the Statute of the Tribunal to file their complaints directly with the Tribunal against the rejection of their claims.

4. The complaints are identical. Each complainant challenges the same decision and seeks identical redress on the same underlying facts; they rely on the same brief and supporting documents, and they each request oral proceedings and ask the Tribunal to hear the same four witnesses. Accordingly, the Tribunal finds it convenient to join their complaints.

5. The evidence provided by the complainants shows that, at its 136th meeting on 26 and 27 June 2013 (before these complaints were filed), the Administrative Council decided to forward their requests for review to the President of the Office. Thus, by the time they filed their complaints in July, August and September of that year, there had been a decision on their claim within the meaning of Article VII, paragraph 3, namely to undertake a review, which, according to Tribunal's well established case law, precludes reliance on that provision (see, for example, Judgment 786, under 5).

6. In the foregoing premises, it is unnecessary to address any other issues of receivability and the complaints must be dismissed in

accordance with the summary procedure set out in Article 7, paragraph 2, of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 14 November 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 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ