

R. (No. 2)

v.

EPO

120th Session

Judgment No. 3560

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr E. H. R. against the European Patent Organisation (EPO) on 20 February 2015;

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. This complaint arises out of a claim for invalidity and consequential non-active status of the complainant. Following a finding of the Medical Committee in favour of allowing the claim, the President of the Office was requested in December 2014 to take a final decision on the matter. On 11 February 2015 the President decided “to suspend his decision as regards the relevant administrative consequences related to a possible recognition of invalidity” and to request a further medical examination. The complainant impugns this decision on the basis that it constitutes a *de facto* rejection of his invalidity claim.

2. The complainant is wrong. The decision he impugns is not a final decision within the meaning of Article VII, paragraph 1, of the

Tribunal's Statute. In substance and in form the decision he received postponed the taking of the final decision. It is properly motivated and it expressly states the legal basis for submitting the case to a medical practitioner for further consideration. The complainant, who appears to have engaged in the process of arranging a meeting with the medical practitioner by his message of 15 February 2015, changed his mind and filed a complaint with the Tribunal on 20 February 2015.

3. Whether the decision of the President was lawful or not is something the complainant will have the opportunity to assess once he receives the final decision. The Tribunal considers that the complainant has every interest in pursuing the process with the medical practitioner so that the President can take a final decision on his claim. In taking that final decision, the President will have to take into account not only the additional medical opinion now requested but also the earlier recommendation made by the Medical Committee. Thereafter, the complainant will be entitled, if he so wishes, to impugn the final decision before the Tribunal, though it is to be hoped that this will prove unnecessary.

4. In the meantime, the present complaint is clearly irreceivable pursuant to Article VII, paragraph 1, of the Tribunal's Statute and must therefore 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 22 May 2015, 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 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ