

E. (No. 6)

v.

EPO

125th Session

Judgment No. 3978

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms B. E. against the European Patent Organisation (EPO) on 21 August 2017;

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. As her request for management review, challenging the Administrative Council's decision CA/D 10/14, had been rejected as unfounded on 19 November 2015, the complainant lodged an appeal with the Appeals Committee on 4 December 2015.

On 20 January 2017 the complainant enquired whether the Administration had submitted its position paper responding to her appeal and, if so, when she could expect to receive it. On 24 January 2017 she was notified that the Administration had not yet submitted its position paper, that it was not possible to inform her of an estimated date when the position paper could be expected, that Judgments 3694 and 3785 – which had recently been adopted by the Tribunal – were likely to have repercussions on the planning of the Appeals Committee's work,

hence the current uncertainty, and that she would be kept informed of further developments.

On 6 February 2017 the complainant filed her fifth complaint, impugning the “decision” of 24 January 2017.

2. In Judgment 3892, delivered in public on 28 June 2017, the Tribunal held that none of the exceptions to the requirement that the internal means of redress must be exhausted applied and it specifically found that the circumstances of the case were not such that the exercise of the complainant’s right of appeal could be said to be paralysed. As this fifth complaint was clearly irreceivable, the Tribunal decided to summarily dismiss it.

3. On 12 July 2017 the complainant reiterated her enquiry, asking when she would receive the Administration’s position paper concerning the appeal she had initiated in December 2015. She did not receive any answer to this enquiry.

4. On 21 August 2017 the complainant filed her sixth complaint. She acknowledges in her brief that no final decision, within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, has yet been taken on her appeal. She contends that she is nevertheless allowed to file her complaint directly with the Tribunal because the internal appeal process is at a standstill, the exercise of her right of appeal is paralyzed and she has done her utmost, to no avail, to accelerate the internal procedure.

5. None of the matters on which the complainant relies calls into question the finding which led the Tribunal to summarily dismiss her fifth complaint, namely, that she had not exhausted the internal remedies available to her. In particular, the complainant has raised no argument in the present complaint that would lead the Tribunal to depart from the conclusion it reached in Judgment 3892, i.e. that she had not shown that an exception to the requirement of Article VII, paragraph 1, of the Statute of the Tribunal was justified in this case.

The Tribunal recalls that its rulings in Judgments 3694 and 3785 are liable to have repercussions on many other decisions taken by the EPO's appointing authorities on internal appeals, entailing a necessary reorganisation of the Appeals Committee's workload which can be expected to take some time. However, this reorganisation has not paralysed the exercise of the complainant's rights. As already stated in Judgment 3892, the complainant may seek compensation for any undue and unjustified delay in the processing of her internal appeal if and when she impugns the final decision on her appeal.

6. It follows that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the 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 10 November 2017, 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 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ