

**T. (No. 40)**

*v.*

**EPO**

(Application for review)

**127th Session**

**Judgment No. 4132**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3955 filed by Mr I. H. T. on 20 March 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

**CONSIDERATIONS**

1. On 24 January 2018 the Tribunal delivered in public Judgment 3955, summarily dismissing the complainant's fortieth complaint against the European Patent Organisation (EPO) in accordance with the procedure set out in Article 7 of the Rules of the Tribunal, on the ground that he had not exhausted the internal means of redress available to him, as required by Article VII, paragraph 1, of the Tribunal's Statute. The reason for that decision was explained as follows in consideration 5 of the judgment:

"[...] The possibility of filing a complaint against an implied rejection is governed solely by the provisions of Article VII, paragraph 3, of the Statute, which states that an official may file such a complaint '[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it'. However, firm precedent

has it that when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes ‘a decision upon [the] claim’ within the meaning of these provisions, which forestalls an implied rejection which could be referred to the Tribunal (see, on these points, Judgments 532, 762, 786, 2681 or 3034).

Given that the decision which the Administrative Council had taken on the complainant’s request for review was withdrawn and that the complainant was informed on 22 February 2017 that the said request for review had been referred to the President, he cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.”

2. In his application for review of Judgment 3955, the complainant alleges that particular facts were not taken into account by the Tribunal. Referring to Judgment 3819, he points out that, according to the Tribunal’s case law, failure to take account of particular facts is an admissible ground for review. It should be noted that the case law also establishes that, in order to be admissible, such a plea must be likely to have a bearing on the outcome of the case (see Judgment 3333, consideration 4, and the case law cited therein).

3. The complainant argues, in substance, that when his request for review was referred to the President of the European Patent Office, the EPO’s secretariat, a new 60-day period began to run for the purposes of Article VII, paragraph 3, of the Tribunal’s Statute, and that as he did not receive any decision within that 60-day period, he was entitled to bring the matter directly before the Tribunal in accordance with the aforementioned provision. He believes that this circumstance was overlooked by the Tribunal and that, had it been taken into account, a different decision would have been reached in Judgment 3955. This argument is clearly unfounded in light of the case law cited above. Moreover, as indicated in consideration 6 of Judgment 3955, the complainant had the possibility of lodging an internal appeal against the implied rejection of his request for review in the event that he received no decision within the prescribed time limits. The internal appeal procedure was supposed to follow its course in accordance with the Service Regulations for permanent employees of the European Patent Office, but the complainant created a fiction that it had started again,

which would have enabled him to rely on Article VII, paragraph 3, of the Statute. This was incorrect.

4. In his submissions, the complainant refers to various other matters which, according to him, were not taken into account by the Tribunal in reaching its decision in Judgment 3955. It is sufficient to note that none of the matters on which he relies would be likely to have a bearing on the outcome of the case. Specifically, they do not call into question the Tribunal's finding that, as a matter of fact, the complainant had not exhausted the internal remedies available to him when he filed his fortieth complaint and was not in the situation contemplated by Article VII, paragraph 3, of the Tribunal's Statute.

5. It follows that the complainant's application for review is clearly devoid of merit 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 application for review is dismissed.

In witness of this judgment, adopted on 9 November 2018, 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 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ