

**K. (No. 39)**

*v.*

**EPO**

**128th Session**

**Judgment No. 4204**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirty-ninth complaint filed by Mr A. C. K. against the European Patent Organisation (EPO) on 14 December 2018;

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. Facts relevant to this case may be found in Judgment 3893, concerning the complainant's twenty-sixth complaint.

2. In June 2012 a Medical Committee determined that the complainant was suffering from permanent invalidity. As two of the three members of the Medical Committee considered that his invalidity could have been caused by an occupational disease, an expert was consulted in accordance with Article 90(3) of the Service Regulations. In the circumstances outlined in Judgment 3893, the expert subsequently renounced her mandate and, in view of this development, the EPO decided to remit the case to the Medical Committee. Having challenged this decision unsuccessfully (internal appeal RI/58/13), the complainant filed his twenty-sixth complaint with the Tribunal, impugning the

decision of 10 May 2016 by which the President of the Office had rejected his appeal as manifestly irreceivable.

3. On 16 May 2017 the Tribunal adopted Judgment 3893, dismissing the complainant's twenty-sixth complaint. However, a few days later, on 24 May 2017, the EPO, which was not yet aware of Judgment 3893, informed the complainant that the President had withdrawn the decision impugned in his twenty-sixth complaint and had referred his appeal back to the Internal Appeals Committee, which had registered it under a new reference (R-RI/2017/033). Judgment 3893 was delivered in public on 28 June 2017.

4. When the Appeals Committee examined appeal R-RI/2017/033 several months later, it noted that the Tribunal had already ruled on the matter in Judgment 3893. On 19 September 2018 it informed the complainant that it had therefore decided to close the case without further consideration. The complainant protested, but on 10 December 2018 the EPO confirmed to him that the Office would take no further action on his appeal.

5. On 14 December 2018 the complainant filed his thirty-ninth complaint, impugning the decision conveyed to him on 19 September 2018. He submits that the decision of the Appeals Committee to close the case in light of Judgment 3893 was unlawful and he therefore claims moral damages and costs.

6. The Tribunal examined the appeal underlying both this and the complainant's twenty-sixth complaint in the proceedings leading to Judgment 3893. The complainant's application for review of that judgment was dismissed in Judgment 4129, delivered in public on 6 February 2019. As the Tribunal's decision in Judgment 3893 is *res judicata*, the Appeals Committee rightly determined that it could not re-open the case. It follows that this complaint is clearly irreceivable 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 complaint is dismissed.

In witness of this judgment, adopted on 24 May 2019, 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 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ