

L. (Nos. 10, 11, 13, 14, 15 and 16)

v.

EPO

(Application for review)

131st Session

Judgment No. 4366

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4256 filed by Mr C. O. D. L. on 11 May 2020;

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. The complainant applies for the review of Judgment 4256, delivered in public on 10 February 2020, on his tenth, eleventh, thirteenth, fourteenth, fifteenth and sixteenth complaints (which had been joined with the complaints of 56 other complainants) filed against the European Patent Organisation (EPO). In that judgment the Tribunal dismissed the joined complaints as “without object” as the impugned decisions had already been withdrawn by the President of the European Patent Office.

2. In his application for review the complainant asks the Tribunal to separate his six complaints from the other complaints decided in Judgment 4256, and to re-evaluate them in full. The grounds for review are that Judgment 4256 involved an omission to rule on some claims, failure to take account of material facts, and material error, and that his due process rights were breached.

3. Consistent precedent has it that a judgment of the Tribunal may be reviewed only in exceptional circumstances and on strictly limited grounds. As the Tribunal recalled in Judgment 3899, consideration 3:

“[P]ursuant to Article VI of its Statute, the Tribunal’s judgments are ‘final and without appeal’ and have *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts which the complainant was unable to rely on in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see, for example, Judgments 3001, under 2, 3452, under 2, and 3473, under 3).”

4. As indicated above, the complainant contends, first, that the Tribunal omitted to rule on some of his claims. Noting that the Tribunal mentioned the issue of costs in consideration 9 of its judgment, he believes it may be inferred from the absence of the words “all other claims are dismissed” in the decision that the Tribunal omitted to rule on his other claims. This contention is plainly mistaken. As was explicitly stated in consideration 8 of the judgment, the complaints were dismissed “in their entirety”, meaning that none of the claims formulated in the various complaints concerned by Judgment 4256 was allowed. More fundamentally, however, as the Tribunal explained in that same consideration, as a result of the withdrawal of the impugned decisions, the legal foundation for the complainants’ claims no longer existed. In such circumstances, it was unnecessary to examine the merits of those claims in further detail. Accordingly this first ground for review must be rejected.

5. As a second ground for review, the complainant contends that the Tribunal failed to take account of material facts. This argument appears to be based solely on the complainant’s observation that “[t]he body text of Judgment 4256 is short [...] [and] reveals very few facts to have been taken into account”. In this regard, it is sufficient to note that the Tribunal referred in its judgment to the facts that were relevant to the decision that it reached. That decision was based on a relatively narrow set of facts common to all of the complaints, and no discussion of other details was necessary in this case.

6. As a third ground for review, the complainant submits that the Tribunal committed a material error, that is to say a mistaken finding of fact involving no exercise of judgement, by joining the complaints on the basis that the impugned decisions were taken by the same President of the Office. He asserts that this criterion would entitle the Tribunal to join all complaints involving the same organization. The complainant's argument is mistaken as the complainant misunderstands the reasons on which the joinder was based. The complaints were joined in the interests of procedural economy because they involved the same decisive question of law, namely, the effect of the withdrawal of the impugned decisions on the pending judicial proceedings. There was clearly no material error and this ground for review also fails.

7. Lastly, the complainant asserts that he was not notified that his complaints would be examined at the Tribunal's 129th Session until after the session had concluded, in breach of Article 10, paragraph 2, of the Rules of the Tribunal and his due process rights. He also cites errors in the listing of complaints on the Tribunal's website (saying that some complaints were assigned to Judgment 4256 and later removed) as raising the question of whether the Tribunal had assured fair proceedings for his complaints. However, it is clear from the case law cited above, in consideration 3, that those are not valid grounds for review. Moreover, no due process rights were violated, as at the beginning of the session the submissions of the parties had been completed at that point and no further action on their part was necessary. The clerical error in the list of complaints covered by the judgment was immediately corrected by the Tribunal and there was no prejudice to the complainant in relation to that error.

8. In light of the above, the 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 Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 30 October 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ