

**B. (No. 2)**

*v.*

**EPO**

**120th Session**

**Judgment No. 3556**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr H. B. against the European Patent Organisation (EPO) on 20 July 2013;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 20 July 2013 the complainant filed a complaint form with the Tribunal indicating that he would correct the complaint as soon as possible. He attached a copy of the decision he sought to impugn, but the complaint form was incomplete and no brief was provided. By a letter of 25 July 2013, which he received on 29 July, he was given 30 days to correct the complaint.

2. On 24 August 2013 he requested an extension of that time limit. This was granted and the time limit for sending the corrected submission was set at 28 October 2013.

3. On 28 October 2013 the complainant filed an incomplete submission. Many supporting documents were in German and no

translation was provided. He requested a further extension, until 28 November 2013, of the time limit to correct the complaint, indicating that he had asked the EPO that same day to translate the documents and that the translation would take “at least 4 weeks”. This further extension was exceptionally granted.

4. On 28 November 2013 he sent in a few translations, but he again requested an extension until 28 December 2013 to provide the remaining supporting documents.

5. Considering that the complainant had already had ample opportunity to file a proper complaint, the President of the Tribunal rejected this request for extension. On 9 December 2013 the complainant was informed by the Registry that his submission did not satisfy the requirements of Article 6(1) of the Rules and the entire submission was sent back to him.

6. On 16 December 2013 the complainant wrote again to the Registrar, asserting that the letter of 9 December had been received by his wife and only recently transmitted to him. He attached several translations but indicated that his submissions were still incomplete and that he would make every effort to finalize them by 28 December. On 27 December 2013 he made a final attempt to file a complete complaint.

7. The legal effect of a request by the Registrar under Article 6(2) of the Tribunal’s Rules is to extend the period in which a complainant can correct a complaint (which is only a complaint in form but not in substance) that, though filed in time, did not comply with the Tribunal’s Rules and, in particular, Article 6(1). Unless the complaint is corrected (that is, rendered conformable with the Rules) within the extended period or any further extended period notified by the Registrar, then it remains deficient. The unremedied deficiency existing at the time of filing means that the complaint form filed was not a complaint for the purposes of Article 6 of the Rules. The legal consequence of this is

that the complaint form was not a complaint at the time of filing, for the purposes of Article VII(2) of the Tribunal's Statute.

Thus, it is obvious that the complaint is out of time. It has not been filed within the time limits provided for in the Tribunal's Statute and Rules. It is therefore clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, 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

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ