

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**A. (No. 69)**

**v.**

**EPO**

**122nd Session**

**Judgment No. 3711**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixty-ninth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 27 December 2014;

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. By an e-mail of 17 May 2013 the complainant asked the President of the European Patent Office to convene a Medical Committee in order to review his health condition. In addition, he asked the President to inform him within two weeks of the measures that the EPO had decided to take to facilitate his reinstatement in 2011, and he stated that his e-mail was to be treated as an internal appeal in the event that his requests were not granted. He was informed by letter of 19 September 2013 that although the Administration saw no basis on which to convene a Medical Committee, in view of the health concerns raised in his e-mail, arrangements had been made for him to undergo a medical examination on 20 September 2013 “to assess [his] current health condition and any effect on [his] employment with the Office”. With

regard to his request concerning the measures to facilitate his reinstatement in 2011, it was pointed out to him that this issue had not been discussed by the Medical Committee at the time, as the Committee had only been asked to determine whether he was fit to resume work.

2. In his brief the complainant states that this complaint is “related to the internal appeal lodged on 17 May 2013” and the EPO’s refusal to treat it as such. However, in the complaint form he has filled in point 3(b), indicating that the Administration failed to take a decision, within the time limit set in Article VII, paragraph 3, of the Tribunal’s Statute, on a claim that he allegedly notified to the EPO on 20 November 2014, and that he is therefore impugning the implied rejection of that claim.

3. The “claim” to which the complainant refers is said to be contained in an e-mail that he sent to the Administration on that date, which reads as follows:

“Dear Ms [S.],

I appreciate to receive a copy of the mentioned e-mail of Ms [B.] to me, sent on 31-03-2014. As the other internal appeals that received a management review decision, I sent to the EPO president the signed appeal dated 17-05 2013. I understand that the EPO administration refuses to treat my letter of 17-05-2013 as an appeal. Given the interests at stake, I will bring this appeal directly to the ILO tribunal.”

4. At the material time, Article 107 of the Service Regulations for permanent employees of the European Patent Office relevantly provided, in paragraph 1, that “[a]n employee [...] may submit a written request that an individual decision relating to him be taken by the appointing authority which is competent to take such decision”. According to paragraph 2 of that article, the appointing authority was to take a decision within two months. Paragraph 3 provided that “[i]f at the end of this period the request has not been replied to, this shall be deemed to constitute an implied decision rejecting it”.

Article 108, paragraph 1, of the Service Regulations stated as follows:

“Any person to whom Article 106 or 107 applies may challenge an act adversely affecting him, or an implied decision of rejection as defined in Article 107, paragraph 3:

- (a) through the review procedure;
- (b) through the internal appeal procedure;
- (c) by filing a complaint with the [...] Tribunal [...].”

5. Inasmuch as the complainant seeks to impugn the implied rejection of a “claim” allegedly notified to the EPO in his e-mail of 20 November 2014, his complaint is devoid of merit. Indeed, it is clear from the wording of that e-mail, reproduced above, that it did not constitute a “claim” within the meaning of Article VII, paragraph 3, of the Tribunal’s Statute. Further, given that it was not addressed to the appointing authority, it could not be regarded as a request for an individual decision under the above-mentioned Article 107 of the Service Regulations.

6. In light of the above, the complaint 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 complaint is dismissed.

In witness of this judgment, adopted on 17 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

ANDREW BUTLER