

**P. (No. 5)**

**v.**

**EPO**

**124th Session**

**Judgment No. 3894**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr G. P. P. against the European Patent Organisation (EPO) on 27 March 2017;

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. The complainant, who was the subject of disciplinary proceedings within the EPO, was suspended from service. Having unsuccessfully challenged that suspension decision, the complainant filed an internal appeal against it with the Appeals Committee in October 2015. According to the complainant, he was notified by a letter dated 27 October 2016 that the Appeals Committee had sent its opinion on his appeal to the competent appointing authority for decision. Having received no further information from the EPO regarding a decision on his appeal, the complainant filed the present complaint with the Tribunal on 27 March 2017.

2. The complainant considers that there has been an implied decision to reject his internal appeal and he bases his complaint on Article VII, paragraph 3, of the Tribunal's Statute.

3. The complainant's approach is mistaken. The Tribunal's case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent authority for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3428, consideration 18, and 3146, consideration 12). Given that the complainant's appeal has been referred to the Appeals Committee, 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 appeal has been implicitly rejected.

4. Although the amount of time that the EPO has taken to process an internal appeal concerning a suspension from service appears, *prima facie*, to be excessively long, the Tribunal notes that the public delivery on 30 November 2016 of Judgment 3785, dealing with the composition of the Appeals Committee, may well account for the fact that the complainant did not receive a final decision at the end of 2016. Indeed, given the finding of the Tribunal that the Appeals Committee was not composed in accordance with the applicable rules, the President of the Office could not have based his final decision on the opinion of the Appeals Committee in relation to the complainant's internal appeal.

5. Since the complainant has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Tribunal's Statute, his 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 16 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ