

W. (Nos. 18 and 19)

v.

EPO

(Applications for review)

131st Session

Judgment No. 4367

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for review of Judgments 4255 and 4256 filed by Mr J. W. on 5 July 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 seeks a review of Judgments 4255 and 4256, both delivered in public on 10 February 2020, by which the Tribunal dismissed his eighteenth and nineteenth complaints, respectively, as well as various other complaints against the European Patent Organisation (EPO), on the grounds that, as a result of the withdrawal of the impugned decisions, the complaints had become without object. His applications are based on an alleged omission to rule on a claim and on the discovery of a new fact on which he was not able to rely in the original proceedings.

2. As the applications are almost identical, save for the reference to newly-issued final decisions, they are joined and the Tribunal will rule on them in a single judgment.

3. Pursuant 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. 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 Judgment 3899, consideration 3, and the case law cited therein).

4. Concerning the alleged omission to rule on a claim, the complainant submits that the Tribunal failed to rule on his claim that his complaints were receivable at the time they were filed. However, this is not a claim but a plea inherent to all complaints submitted to the Tribunal, as all complainants necessarily consider that their complaints are receivable. Moreover, once the Tribunal had found that the complaints in question had become without object, there was no reason to deal with the question of their receivability at the time they were filed. Accordingly, this ground for review is rejected.

5. The complainant argues that the new fact on which he was unable to rely in the original proceedings is that the President of the European Patent Office has in the meantime issued new final decisions rejecting his internal appeals. While the complainant now has the possibility to file complaints impugning these new final decisions, if he considers it appropriate, their issuance has no bearing on the fact that the previously issued final decisions had been withdrawn by the President of the Office and on the Tribunal's finding that his eighteenth and nineteenth complaints to the Tribunal had, as a result, become without object. Accordingly, this ground for review is also rejected.

6. Consequently, the applications for review are clearly devoid of merit 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 applications for review are 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