H. (No. 7)
v.
EPO

139th Session **Judgment No. 4987**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr H. H. against the European Patent Organisation (EPO) on 12 July 2019 and corrected on 3 September 2019, the EPO's reply of 8 January 2020, the complainant's rejoinder of 25 February 2020 and the EPO's surrejoinder of 8 June 2020;

Considering the letter of 12 January 2023 by which the EPO informed the Registry of the Tribunal that it had paid 100 euros in moral damages to the complainant for the irregular composition of the Appeals Committee, as was done in Judgment 4550;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant contests the decision to close the area of competence G01R in Berlin, Germany.

Facts relevant to this case can be found in Judgment 4799, delivered in public on 31 January 2024. Suffice it to recall that, in 2008, the European Patent Office, the EPO's secretariat, discussed the restructuring of Directorate-General 1 and the future direction of its Berlin sub-office. It developed the concept of "area of competence", which referred to the concentration of all work relating to a technical

field with a single group of examiners working on one site of employment where Directorate-General 1 was active. In December 2008, the staff was informed of the decision to create and implement the area of competence in the Berlin sub-office.

On 9 November 2011, the President of the Office introduced a procedure to support the implementation of areas of competence in Directorate-General 1 ("the implementation procedure"). It provided, inter alia, an "Implementation Resolution Process" if the areas of competence implementation plans led to complaints. It provided that if the complaint could not be resolved by the parties in disagreement, any party could submit the complaint to the Vice-President of Directorate-General 1, in writing, one month after the publication of the final implementation plan. The Vice-President would then submit the complaint to the Area of Competence Implementation Support Committee with the request to mediate or provide a recommendation. After receiving a closure report from the Committee, the Vice-President took a decision on the complaint. The President's decision also provided that the "creation and implementation of an [area of competence] shall be stopped until [the Vice-President of Directorate-General 1's] decision has been communicated to all parties concerned".

On 25 June 2014, the complainant was informed orally that the area of competence G01R in Berlin, in which he was working, would be closed and transferred to Munich, Germany. The closure of the area of competence G01R in Berlin was further mentioned in an email of 1 July 2014 sent to the complainant's directorate. The staff members concerned by the closure of the area of competence G01R in Berlin were given an alternative: either transfer to Munich in the same technical field or remain in Berlin but in another technical field.

On 10 October 2014, the Vice-President of Directorate-General 1 published the final cluster area of competence plans for 2015, which foresaw, inter alia, the transfer of the area of competence G01R in Directorate-General 1 from Berlin to Munich as from 1 January 2015.

The complainant contested the decision to close the area of competence G01R by filing several requests for review challenging the decision as communicated to him orally on 25 June 2014 and confirmed

on 1 July 2014, the announcement of 10 October 2014, and the decision of 28 January 2015 communicated to another staff member. All the requests were rejected. The Appeals Committee, to which the matters had been referred between February and September 2015, decided to consolidate the appeals under one appeal number RI/24/15 on the grounds that the appeals concerned the same person and issue. On 10 October 2016, the complainant was notified that, pursuant to the Appeals Committee's opinion of 11 August 2016, the President had rejected his appeals. In mid-2017, he was informed that the President had withdrawn his final decision and referred the appeal back to the Appeals Committee for a new examination pursuant to Judgment 3694, delivered in public on 6 July 2016, and Judgment 3785, delivered in public on 30 November 2016, in which the Tribunal found that the Appeals Committee was not composed according to applicable rules. In August 2018, the Secretariat of the Appeals Committee informed the complainant that his remitted appeal was registered under the reference R-RI/2017/123, and that the presiding member had proposed to treat the appeal under a summary procedure. In August 2018, the complainant raised objections concerning the decision to refer his case back to the Appeals Committee.

In its opinion of 15 February 2019, the Appeals Committee considered that the appeal against the decision to close the area of competence G01R was manifestly irreceivable and, therefore, treated it under the summary procedure. Regarding the complainant's objection to the remittal of his appeal for a fresh examination, it found that the President's decision was justified given that it was clear from Judgments 3694 and 3785, delivered in public respectively in July and November 2016, that the Appeals Committee, which rendered the first opinion on the complainant's appeals, was not regularly constituted. Regarding the crux of the appeal, the Appeals Committee held that the oral announcement of 25 June 2014 and the communication of 10 October 2014 concerning the cluster area of competence plans were decisions of a general nature and needed further individual implementing decisions to have an effect on the complainant's legal situation. Hence, the contested decisions did not individually adversely affect him. It also noted that the complainant had filed an internal complaint that was still

pending before the Implementation Support Committee. Consequently, his appeal was premature. In addition, he was irreceivable to challenge the 28 January 2015 decision, which was addressed to another staff member and could not in any way apply to him. Although the Appeals Committee recommended rejecting the appeal as manifestly irreceivable, it recommended awarding the complainant 200 euros in moral damages for the undue delay in the internal appeal proceedings, as the delay was excessive and solely attributable to the Office, while adding that the impact of the delay on the complainant's dignity was unclear.

By a letter of 15 April 2019, the Vice-President of Directorate-General 4, acting on delegation of authority from the President, informed the complainant of her decision to endorse the Appeals Committee's recommendation for the reasons it stated, except regarding the conclusion that the decision to close the area of competence G01R was of a general nature. In her view, the decision to close the area of competence was an "organisational decision" that was not open to challenge. With respect to the length of the internal appeal procedure, she decided to pay the complainant an additional 100 euros to the 200 euros recommended by the Appeals Committee. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to declare the Appeals Committee's opinion null and void, and to complement the fact finding and taking of evidence. He also asks the Tribunal to declare the closure of the area of competence G01R in Berlin "illegitimate", to recognise the partiality of the involved officers and to "reset the final implementation plan to the original final implementation plan by reinstalling the [area of competence] G01R in Berlin in the status defined in the original final implementation plan, i.e. as 'Already full [area of competence]' and 'completed'".

He further requests the Tribunal to award him moral damages in the amount of 1,000 euros per month to be calculated from June 2014 until the Tribunal publishes its decision. Lastly, he seeks compensation for procedural delays, compound interests at the rate of 6 per cent per annum on all amounts due and costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable, either for failure to exhaust internal means of redress or for lack of a cause of action. Subsidiarily, the EPO asks the Tribunal to dismiss the complaint as unfounded. It also asks that the complainant bear part of its costs as the complaint constitutes an abuse of process.

CONSIDERATIONS

1. The complainant requests the joinder of the present complaint (his seventh) with his fifth and eighth complaints. However, in his rejoinder, he has withdrawn the request for joinder with his fifth complaint as the latter has already been rejected by the Tribunal in Judgment 4256, delivered in public on 10 February 2020. The Tribunal dismissed his fifth complaint on the ground that the impugned decision had been lawfully withdrawn by the President of the Office and the appeal had then been lawfully remitted to a newly composed Appeals Committee for examination. As to the complainant's seventh and eighth complaints, although they concern facts and decisions which are interconnected, the legal issues raised are partially discrete. Accordingly, the complaints will not be joined.

2. The complainant applies for oral proceedings and lists witnesses. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Thus, the request is rejected.

3. The following discussion proceeds against the background already set out in the facts described above. The complainant impugns the 15 April 2019 decision, by which the Vice-President of Directorate-General 4, acting on delegation of authority from the President, informed the complainant of her decision to endorse the Appeals Committee's recommendation for the reasons it stated, except insofar as it concluded that the 10 October 2014 decision to close the area of competence, G01R, was of a general nature. In her view, the decision to close the area of competence was an "organisational decision" that was not open to challenge.

4. The scope of the present complaint is therefore limited to the 15 April 2019 and the 10 October 2014 decisions mentioned in consideration 3 above. Any reference made by the complainant to the 16 October 2015 individual decision to transfer him “into a new technical field”, is outside the scope of the present complaint as there are no claims in this respect. Furthermore, no final decision concerning the complainant’s internal appeal against such individual decision is challenged in the present complaint.

5. The 10 October 2014 decision to close the area of competence G01R is, at best for the complainant, a general decision under the Tribunal’s case law. Such a decision serves as a legal basis for individual decisions, as is assumed to be the case of the decision at issue. It cannot be impugned, save in exceptional cases, and its lawfulness may only be contested in the context of a challenge to the individual decisions that are taken on its basis. General decisions cannot be immediately challenged because they, ordinarily, do not immediately and directly affect staff members. The complainant challenged the 10 October 2014 decision by internal appeals filed between February and September 2015, that is before the issuance of the individual decision to transfer him into a new technical field. Thus, the general decision did not immediately and directly affect the complainant. As a result, the Appeals Committee and the Vice-President of Directorate-General 4 correctly considered the internal appeals irreceivable as premature. Based on the same ground, the present complaint is irreceivable as well.

6. The impugned decision also endorsed the Appeals Committee’s opinion to the extent it considered that the complainant, in his internal appeals, made reference to the 28 January 2015 individual decision, regarding a third party (namely, another staff member, who was moved to a new technical area by such decision), and that this individual decision did not affect the complainant. The EPO, in the present complaint, raises a receivability issue alleging that the complainant has no cause of action in challenging an individual decision concerning a third party. The Tribunal notes that, although the complainant mentions the 28 January 2015 decision in his account of the facts, he does not

challenge the impugned decision to the extent it considered his internal appeals irreceivable with regard to the 28 January 2015 decision. As a result, the Tribunal considers that the 28 January 2015 individual decision is outside the scope of the present complaint. In any event, the complainant has no cause of action with regard to an individual decision affecting a third party.

7. In light of the outcome of the present complaint, and, in particular, of the circumstance that the challenge to the decision regarding the closure of an area of competence has been considered as irreceivable, the complainant's request for disclosure of the patent files EP07251146.2, EP08011999.3, EP03002991.2, and EP04004244.2 is immaterial and is, thus, rejected.

8. The complainant advances a number of pleas concerning the composition of the Appeals Committee, the re-registration of the appeal and the undue delay. Given that the complaint is irreceivable, the Tribunal has no competence to consider these matters. But, even assuming they remain issues that the Tribunal can address (which the Tribunal does not accept), they are not founded.

9. As the complaint fails, the complainant is not entitled to costs for the present proceedings.

10. The counterclaim for costs filed by the Organisation is rejected. It is based on a contention that the complaint is vexatious. While there is substance to that argument the Tribunal is not satisfied, on balance, that the proceeding should be characterised in that way. Accordingly, no costs will be awarded against the complainant.

DECISION

For the above reasons,

The complaint is dismissed, as well as the counterclaim for costs.

In witness of this judgment, adopted on 5 November 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

JACQUES JAUMOTTE

ROSANNA DE NICTOLIS

MIRKA DREGER