

F. (No. 17)

v.

EPO

141st Session

Judgment No. 5199

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventeenth complaint filed by Mr S. C. F. against the European Patent Organisation (EPO) on 8 July 2019, the EPO's reply of 8 January 2020, the complainant's rejoinder of 7 February 2020 and the EPO's surrejoinder of 2 June 2020;

Considering the application to intervene filed by Mr H. H. on 7 October 2019 and the EPO's comments thereon dated 11 February 2020;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the issuing of automatic communications to patent applicants on behalf of the examining division dealing with the application or a member thereof.

The complainant is a former permanent employee of the European Patent Office – the EPO's secretariat – who served as an examiner at its sub-office in Berlin, Germany. He retired on 1 December 2018.

At the material time, during the processing of patent applications, certain communications, such as the notification of a time limit, were sent to applicants automatically by an information technology system. These communications typically bore the name of the examiner and/or examining division dealing with the application. Some examiners, including the complainant, objected to this practice, particularly because they felt that such communications wrongly gave the impression that the examining division had already started the substantive examination procedure, and because they did not wish to be identified as the author of communications for which they were not responsible.

In 2012 a disagreement arose between the complainant and his director (the Director of Directorate 1524) concerning two patent applications for which he was the first examiner. In each case, a first communication had been sent to the applicant automatically. Thereafter, the complainant sent to each applicant a “summons for oral proceedings” in which he made a comment that appeared to call into question the Office’s established procedure of issuing automatic communications to applicants. By emails of 24 May 2012 and 1 June 2012, the director pointed out that these comments were inappropriate and he asked the complainant to reissue the summonses without them. The complainant, together with the other members of the examining divisions concerned, eventually cancelled the summonses, but they continued to express their disagreement with the director’s view. In an email of 15 June 2012, the director requested that the summonses be reissued by 22 June 2012, to no avail. The Vice-President of Directorate-General 1 (VP1) then intervened and, by a letter of 31 July 2012, ordered the complainant and his colleagues to comply with their director’s instructions and to issue modified summonses by 21 August 2012.

On 10 August 2012 the complainant lodged an appeal with the President of the Office, challenging the letter of 31 July 2012 from VP1 and denouncing what he regarded as an unlawful interference in the responsibilities vested in patent examiners under the European Patent Convention. In accordance with the unanimous recommendations of the Appeals Committee, the Principal Director of Human Resources, acting by delegation of power from the President, decided to reject the appeal

as manifestly irreceivable. However, this final decision, which the complainant impugned in his sixth complaint, was subsequently withdrawn by the President because of a flaw in the composition of the Appeals Committee that came to light in another case also involving the present complainant (see Judgment 3785, delivered on 30 November 2016). The EPO informed the complainant on 1 March 2017 that his appeal had been remitted to a properly composed Appeals Committee for a new examination. His sixth complaint was, in due course, dismissed by the Tribunal as being without object (see Judgment 4256, delivered on 10 February 2020).

On 15 March 2019 the Appeals Committee issued a new opinion on the complainant's appeal, again recommending that it be rejected as manifestly irreceivable on the grounds that it was not directed against a decision that adversely affected him within the meaning of Article 108 (formerly Article 107) of the Service Regulations for permanent employees of the European Patent Office. The Committee nevertheless recommended that the complainant be awarded 600 euros in moral damages on account of the length of the internal proceedings.

By a decision of 15 May 2019, the Principal Director of Human Resources, acting by delegation of power from the President, rejected the complainant's appeal in accordance with the unanimous recommendation of the Appeals Committee but awarded him 600 euros for delay. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision *ab initio* and to declare that his director's emails of 24 May, 1 June and 15 June 2012, as well as the VP1's letter of 31 July 2012 "and the corresponding orders and disciplinary threats", are "inapplicable". He also claims moral damages, further compensation for procedural violations and delays, costs, and interest at an annual rate of 8 per cent on all sums awarded. Subsidiarily, he asks the Tribunal to declare the opinion of the Appeals Committee and the entire appeal procedure null and void, to refer the appeal back to a newly composed Appeals Committee to be examined on the merits, and to award him compensation for procedural delays and violations.

The EPO asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded. It also asks the Tribunal to order the complainant to pay costs in the amount of 1,000 euros, on the grounds that this complaint is an abuse of process.

CONSIDERATIONS

1. This judgment concerns the complainant's seventeenth complaint. He impugns a decision of 15 May 2019 of the Principal Director of Human Resources (Principal Director), acting under a delegation of power, dismissing an appeal of the complainant to the Appeals Committee as manifestly irreceivable. The appeal was against a purported decision of VP1 dated 31 July 2012 (VP1's decision). The Principal Director adopted in the impugned decision the Appeals Committee's reasons for concluding the appeal was manifestly irreceivable.

2. The Appeals Committee's reasons included that VP1's decision simply confirmed the decision of the Director of Directorate 1524 (the Director's instruction) directing that the complainant (and others) act in a certain way, the direction being embodied in the emails of 24 May and 1 June 2012. The Committee noted the complainant had brought an earlier appeal against the Director's instruction and referred to the principle that a person may not submit the same matter for decision in more than one proceeding, citing Judgment 3146, consideration 11.

3. The Appeals Committee's reasons also included reference to the case law deciding that the Tribunal was not a forum in which a complainant could challenge the law and/or procedures applicable to patent applications because they do not affect a staff member's relationship with the organisation nor do they adversely affect staff members and that the same is true of managerial instructions relating to the patent granting procedure. In its pleas the EPO refers to Judgment 3053, consideration 11, in support of these propositions.

4. The Appeals Committee's reasoning was correct, as was its adoption by the Principal Director. The complainant's appeal was irreceivable. Accordingly, the complaint should be dismissed. It follows that the application to intervene must also be dismissed.

5. The defendant Organisation makes a counterclaim for costs in these proceedings on the footing that the complaint is an abuse of process. The Tribunal has already briefly addressed and rejected, in relation to the complainant's sixteenth complaint, some of the arguments made in a similar counterclaim.

In support of its counterclaim, the EPO relies, in part, on Judgment 4025 and submits, in effect, it is on all fours with the present case insofar as, "likewise in the case underlying [...] Judgment [4025], the [c]omplainant's internal appeal was manifestly irreceivable and had thus no chance of success". That statement is not strictly accurate. In the case leading to Judgment 4025, the complainant, a former staff member, did not pursue an internal appeal but filed her complaint directly with the Tribunal. In consideration 11 of Judgment 4025, the Tribunal found that the complainant's pleadings reflected "a case that obviously had no possibility of success and [was] clearly frivolous". It was for that reason that the complainant was ordered to pay costs sought in the organisation's counterclaim in the Tribunal.

6. In the present case, it is true that the high probability would have been that the complaint, at the time of its filing, would be dismissed having regard to the issues raised by the complainant and the fact that his internal appeal was directed against a decision that was purely confirmatory. Nevertheless, his arguments were not manifestly entirely devoid of substance. Accordingly, the complaint cannot be characterized as an abuse of process and no costs order should be made.

DECISION

For the above reasons,

1. The complaint is dismissed, as is the application to intervene.
2. The EPO's counterclaim for costs is rejected.

In witness of this judgment, adopted on 20 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.